

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOES, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: None

ABSTAIN, COUNCIL MEMBERS: McCarthy

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

Exhibit A

Findings

Coastal Development Permit § 17.40.200.E.3

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

There is no beach access at this location.

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

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

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

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

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

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

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

No mining operations are proposed.

LCP Land Use Plan consistency

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

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

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

Exhibit B1

Conditions of Approval for the Coastal Development Permit (CDP)

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

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

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

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

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

Per MM BIO-1.5:

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

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

Per MM BIO-1.6:

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

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

7. Display of Tree Removal Permit. Prior to and during the removal of any tree approved for removal, a copy of the tree removal permit shall be displayed on site. If no tree removal permit is displayed, the City will issue a stop work order and commence the City's administrative fine process.

8. Tree Protection. Per MM BIO-1.1 from MST's adopted MND:

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

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

9. Additional Mitigation Measures. In addition to the measures stated herein, the City of Marina relies upon all other mitigation measures included in the MMRP and certified by MST as they apply to the portions of the project subject to the City's discretionary permit review; i.e., tree removal within the TAMC ROW, new transit development within the 0.37 ac portion of the TAMC ROW in the City's CDP jurisdiction, and site development at the 5th St. Transit Center.

10. Replacement Trees. Upon completion of the grading and infrastructure development for the Phase in which trees were removed, new trees shall be planted at a 2:1 ratio. The replacement tree species and sizes shall be a mix of native coast live oak (*Quercus agrifolia*), Monterey cypress (*Cupressus macrocarpa*), Ray Hartman Wild Lilac (*Ceanothus X 'Ray Hartman'*), Majestic beauty fruitless olive (*Olea Europaea 'Majestic Beauty'*), with Coffeeberry (*Frangula californica*), Coast silktassel (*Garrya elliptica*), and Toyon (*Heteromeles arbutifolia*) interspersed to supplement the Ceanothus at the discretion of the landscape architect. The tree sizes shall follow the Appendix C of Resolution

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

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

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

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

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

Exhibit B2

Conditions of Approval for the (non-Coastal) Tree Removal Permit (TRP)

- Note that the first three (3) are TRP-specific; the following are general COAs included in both COA Exhibits (B1 and B2)

1. 5th St. Station – MM BIO-10: Special-Status Plant Surveys and HMP Compliance

A qualified biologist shall be retained to conduct surveys for Monterey spineflower and Yadon's piperia within the 5th Street Station. The surveys shall be conducted during the appropriate identification period(s) to determine presence or absence, according to USFWS, CDFW, and CNPS protocol. The biologist shall prepare a report that provides the results of the survey, and, if found the number and locations of individuals/populations identified.

- If no Monterey spineflower or Yadon's piperia are found, no further mitigation is necessary.
- If Monterey spineflower or Yadon's piperia are found, salvage efforts for these species will be evaluated by a qualified biologist in coordination with the MST prior to construction to further reduce impacts per the requirements of the HMP and 2017 Programmatic BO. Where salvage is determined feasible and proposed, seed collection should occur from plants within the development site and/or topsoil should be salvaged within occupied areas to be disturbed. Seeds should be collected during the appropriate time of year for each species as determined by the qualified biologist. The collected seeds and topsoil should be used to revegetate temporarily disturbed construction areas and reseeded and restoration efforts on- or off-site, as determined appropriate by the qualified biologist and MST.

2. Sewer Easement. Prior to removing any trees within the 5th Street station area, the applicant shall provide Community Development Department staff with written documentation from Marina Coast Water District (MCWD) certifying trees near the existing MCWD sewer easement are cleared for removal.

3. Site and Architectural Design Permit. The applicant shall obtain a Design Review permit prior to any vertical development at the 5th St. Transit Center or platform improvements at the Palm Ave. transit stop if required by MMC 17.56.010. Depending on the future scope of transit-related development, a Design Review permit may not be required.

4. Effective Date, Expiration, and Extensions. This approval shall become effective immediately, except when an appeal period applies pursuant to MMC Section 17.70 in which case actions shall become effective ten (10) days after the approval date provided that no appeal is filed. Approval shall expire **two (2) years** from the Approval date, or from the date of the final decision in the event of an appeal, unless within such period a complete building permit application has been filed with the Community Development Department, or the authorized activities have commenced in the case of a permit not involving construction. Upon written request and payment of appropriate fees submitted no later than the expiration date of this Approval, the Community Development Director or designee may grant a one-year extension of this date, with additional extensions subject to approval by the approving body (Planning Commission). Expiration of any necessary building permit or other construction-related permit for this project may invalidate this Approval if said Approval has also expired. If litigation is filed challenging this Approval or its implementation, then the time period stated above for obtaining necessary permits for construction and/or commencement of authorized activities is automatically extended for the duration of the litigation.

5. **Compliance with Other Requirements.** The owner, applicant, and operator shall comply with all other applicable federal, state, regional, and local laws, codes, requirements, regulations, and guidelines. Compliance with other applicable requirements may require changes to the approved use and/or plans. These changes shall be processed in accordance with the procedures contained in Condition #4.
6. **Modifications.** Any modification to the approved project, site plan, conditions of approval, or use requires consistency review and approval by Planning Staff. Major revisions may require review and approval by the original approving body or a new independent permit.
7. **Compliance with Conditions of Approval.** The owner, applicant, and operator shall be responsible for compliance with all Conditions of Approval. The City reserves the right at any time during construction to require certification by a licensed professional at the applicant's expense that the as-built project conforms to all applicable requirements. Violation of any term, project description, or Condition of Approval is unlawful and prohibited. In the case of noncompliance with the requirements of a Use Permit, MMC Section 17.58.060 allows for the revocation of said permit. The City reserves the right to initiate civil and/or criminal enforcement and/or abatement proceedings where violations are present, consistent with Chapter 1.08 of the Marina Municipal Code.
8. **Mitigation Measures BIO 1 – BIO 6.** The owner, applicant, and operator shall be responsible for compliance with the Construction Best Management Practices, Construction-Phase Monitoring, Non-Native/Invasive Species Controls, Pre-Construction Surveys for Protected Avian Species, Pre-Construction Surveys for Monterey Dusky-Footed Woodrat, and Pre-Construction Surveys for Townsend's Big-eared Bat as described in the Biological Report⁴ and MMRP.
9. **Timing of Tree Removal.**
Per Mitigation Measure (MM) BIO-1.4 from MST's adopted MND:

Construction activities that may directly (e.g., vegetation removal) or indirectly (e.g., noise/ground disturbance) affect protected nesting avian species will be timed to avoid the breeding and nesting season. Specifically, vegetation and/or tree removal can be scheduled after September 16 and before January 31. Alternatively, a qualified biologist will be retained by the project applicant to conduct pre-construction surveys for nesting raptors and other protected avian species within 500 feet of proposed construction activities if construction occurs between February 1 and September 15. Pre-construction surveys will be conducted no more than 14 days prior to the start of construction activities during the early part of the breeding season (February through April) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May through August). Because some bird species nest early in spring and others nest later in summer, surveys for nesting birds may be required to continue during construction to address new arrivals, and because some species breed multiple times in a season. The necessity and timing of these continued surveys will be determined by the qualified biologist based on review of the final construction plans and in coordination with the CDFW [California Department of Fish and Wildlife], as needed.

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

⁴ <https://mst.org/wp-content/media/Appendix-07-Final-Biological-Resources-Report.pdf>

Per MM BIO-1.5:

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

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

Per MM BIO-1.6:

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

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

10. Display of Tree Removal Permit. Prior to and during the removal of any tree approved for removal, a copy of the tree removal permit shall be displayed on site. If no tree removal permit is displayed, the City will issue a stop work order and commence the City's administrative fine process.

11. Tree Protection. Per MM BIO-1.1 from MST's adopted MND:

- a. Tree and vegetation not planned for removal or trimming shall be protected prior to and during construction to the maximum extent possible through the use of exclusionary fencing, such as hay bales for herbaceous and shrubby vegetation and protective wood barriers for trees. Only certified weed-free straw shall be used to avoid the introduction of non-native, invasive species. A biological monitor shall supervise the installation of protective fencing and monitor at least once per week until construction is complete to ensure that the protective fencing remains intact.
- b. Per MM BIO-4.12:
 - j. Temporary construction fencing shall be placed at approximately 10 feet from the trunk of native trees intended to be retained. Grading, vegetation removal, and other ground disturbing activities shall not commence until the project arborist has inspected and approved the protective fencing installed by the contractor. No equipment or materials,

including soil, shall be stored within the established environmental exclusion zone. Prior to grading within 25 feet of retained trees, the project arborist shall be consulted to determine whether pruning is necessary to protect limbs from grading equipment.

- ii. To avoid soil compaction from damaging the roots, heavy equipment shall not be allowed to drive over the root area. If deemed necessary and approved by the forester, equipment may drive across one side of the tree. To reduce soil compaction, wood chips shall be spread 6-12 inches deep to disperse the weight of equipment and plywood sheets shall be placed over the wood chips for added protection.
- iii. Roots exposed by excavation must be pruned and recovered as quickly as possible to promote callusing, closure, and healthy regrowth.
- iv. Retained trees shall be watered periodically in accordance with species need to promote tree health. Transplanted trees and their intended planting areas shall be pre-watered. Post planting watering shall be done as needed to assure establishment.

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

- 12. Additional Mitigation Measures.** In addition to the measures stated herein, the City of Marina relies upon all other mitigation measures included in the MMRP and certified by MST as they apply to the portions of the project subject to the City's discretionary permit review; i.e., tree removal within the TAMC ROW, new transit development within the 0.37 ac portion of the TAMC ROW in the City's CDP jurisdiction, and site development at the 5th St. Transit Center.
- 13. Replacement Trees.** Upon completion of the grading and infrastructure development for the Phase in which trees were removed, new trees shall be planted at a 2:1 ratio. The replacement tree species and sizes shall be a mix of native coast live oak (*Quercus agrifolia*), Monterey cypress (*Cupressus macrocarpa*), Ray Hartman Wild Lilac (*Ceanothus X 'Ray Hartman'*), Majestic beauty fruitless olive (*Olea Europaea 'Majestic Beauty'*), with Coffeeberry (*Frangula californica*), Coast silktassel (*Garrya elliptica*), and Toyon (*Heteromeles arbutifolia*) interspersed to supplement the Ceanothus at the discretion of the landscape architect. The tree sizes shall follow the Appendix C of Resolution 24-01. Alternatively, MST may provide the City with "in lieu" fees per MMC Section 17.62.060.D.2. Any combination of these two (2) replacement methods is acceptable.
- 14. Tree and Landscaping Maintenance.** The trees and landscaping installed under this permit shall be maintained for the life of the project using the International Society of Arboriculture (ISA) best management practices (BMPs).
- 15. Site Restoration Plan.** The ground surface shall be restored in the vicinity of the tree removals. Restoration shall include but not be limited to the removal of tree stumps and filling of any holes left by the removal.
- 16. Coastal Development Permit.** The two trees proposed for removal within the coastal zone (nos. 1073 and 1074) are subject to additional review and a coastal development permit (CDP) from the City of Marina. These trees shall not be removed until the CDP has been issued and all appeal periods have passed. Removal of any trees within the coastal zone shall be consistent with the required Conditions of Approval attached to the CDP.
- 17. Encroachment Permit(s).** Prior to the commencement of any work within the City's public ROW, an encroachment permit from the Public Works Dept. shall be obtained.

- 18. Inadvertent Discovery of Archaeological, Tribal Cultural Resources, Paleontological Resources or Human Remains.** Any inadvertent discovery while removing trees and/or restoring the site post-removal shall be mitigated in accordance to MM CR-2 in the adopted MMRP.
- 19. Indemnification.** To the extent allowable by law, the owner, applicant, and operator agree to hold the City harmless from costs and expenses, including attorney's fees, incurred by the City or held to be the liability of the City in connection with the City's defense of its actions in any proceeding brought in any state or federal court challenging the City's actions with respect to the project. The owner, applicant, and operator understand and acknowledge that the City is under no obligation to defend any legal actions challenging the City's actions with respect to the project.
- 20. Violation of Code.** Any person who does any work or uses, occupies or maintains any building or structure, or causes the same to be done, or does any grading, contrary to or in violation of this title or of any of the uniform codes adopted by this title is guilty of an infraction pursuant to MMC 15.04.060.
- 21. Construction Noise.** Unless otherwise authorized, construction activities shall be conducted in compliance with MMC Section 15.04.055 and all non-emergency construction or repair work shall be limited to the following schedule:
- Monday through Saturday: 7 a.m. to 7 p.m.
 - Sunday and holidays: 10 a.m. to 7 p.m. (For the purposes of this section, "holidays" shall include New Year's Day, July 4th, Thanksgiving and Christmas)
 - During daylight savings time, the hours of construction may be extended to 8 p.m.
- No construction, tools, or equipment shall produce a decibel level of more than sixty (60) decibels for twenty-five (25) percent of an hour at any receiving property line.
- 22. Operational Noise.** Noise levels from the project site after completion of the project (i.e., during project operation) shall comply with the performance standards of Chapter 9.24 of the Marina Municipal Code. If noise levels exceed these standards, the activity causing the noise shall be abated until appropriate noise reduction measures have been installed and compliance verified by the City.
- 23. Site Maintenance.** The site shall be kept in a blight- and nuisance-free condition, and healthy and well-kept landscaping shall be continuously maintained. Any existing blight or nuisance shall be abated within 60 days of permit approval.
- 24. Lighting.** Exterior lighting fixtures shall be adequately shielded to a point below the light bulb and reflector to prevent unnecessary glare onto adjacent properties. After installation, the Community Development Director or designee shall retain the right to require reduction in the intensity of illumination or change of light color if said illumination creates any undue public nuisance.
- 25. Waste Receptacles.** No storage of trash, recycling, or food waste receptacles shall be permitted within the public right-of-way. Receptacles shall be stored on site and screened from public view. The owner, applicant, and operator shall ensure that the requirements of Chapter 8.04 of the Marina Municipal Code pertaining to recycling and solid waste disposal are met.
- 26. Graffiti.** All graffiti on facilities must be removed at the sole expense of the permittee within 48 hours after notification from the City.

Exhibit C1

Appeal filed by Mason Clark on April 16, 2024

**APPEAL FORM**

RECEIVED

APR 16 2024

CITY OF MARINA
PLANNING DIVISION

Appeal to the Planning Commission: Review, report on, publish and perform staff work for an appeal of a staff decision to the Planning Commission.

Appeal to the City Council: Review, report on, publish and perform staff work for an appeal of a Planning Commission decision to the City Council.

Appeal to: ☐ Planning Commission ☒ City Council
 From Action of: Planning Commission approval of SURF! Busway Project CDP 24-0004
 Date of Action : April 11, 2024

Appellant's:
 Name: Mason Clark
 Mailing Address: 17926 Maplehurst Pl, Canyon Country, CA 91387 mason@handcar.com
 Phone (Business): 661-600-3822 Phone (Home): 661-600-3822
 Appellant's Interest: Citizen and business owner

Appellant's Reason for Appeal:

Reasons for appeal shall pertain to factual information considered by the last reviewing body. No new factual information may be submitted.

See attached narrative

Appellant's Signature: Mason Clark Date: 4/15/2024

FOR OFFICE USE ONLY:

DATE APPEAL SUBMITTED _____
 FEE COLLECTED \$ _____
 ORIGINAL APPLICATION NUMBER _____

APPEAL NUMBER: _____
 RECEIPT NUMBER _____
 PLANNER INITIALS: _____

I am submitting an appeal of Coastal Development Permit 24-0004, also known as the SURF! Busway Project. The busway project violates the adopted City of Marina Local Coastal Plan as outlined below.

The proposed busway will remove portions of the Monterey Branch Line that will result in the discontinuance of our family's popular handcar tours over the rail line. With the train tracks removed it will be impossible for railcars to pass.

Handcar Tours is a popular recreational business that in 2023 attracted more than 10,000 riders from around the world. Primarily guests visit from inland California areas without access to the California Coast. Patronage has been exponentially growing and as of April 2024, the tours have carried more than 20,000 guests, with some tours already booked out into the summer.

Marina's Local Coastal Plan Policies specifically favor unique recreational uses such as the handcar tours over alternative non-coastal dependent uses within the coastal zone.

From the Marina LCP Policies:

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.

The SURF! Busway is not a recreational use. It is designed to serve the local population by providing transportation between Marina and Sand City with minimal stops. Handcar Tours is primarily focused towards visitor serving Coastal recreation services. More than 95% of our customers reside from 60+ miles away and travel to Marina for the purpose of participating in human powered railroad tours through the coastal region.

Other LCP policies also favor our unique rail tours. The handcars use an existing rail line that supports conservation by avoiding impacts to the surrounding area that human foot traffic causes. The handcar fleet allows visitors to enjoy the coastal environment, while promoting green policies and conservation. The vehicles travel slowly, with little noise, and don't alarm native animal populations.

From the Marina LCP Policies:

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.

6. To provide for a level of recreation use which is consistent with the ability to operate, maintain, police and protect the beach and dune environment.

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

By eliminating handcar tours the busway will limit coastal access. LCP policies prohibit eliminating a unique recreational use in favor of a proposed non-recreational transportation use. When competing proposals are present the policy dictates the coastal dependent recreational use shall be given priority.

The plans submitted and approved by the City of Marina Planning Commission are vague and incomplete. However, recent plans for the entire project area submitted to the California Coastal Commission show that the existing recreational trail connection point under Highway 1 is to be removed. (Exhibit A, C)

The proposed SURF Busway will reduce and hinder coastal access by eliminating a highly trafficked coast access point under Highway 1. This important access point is used by more than 2000 park and coastline visitors each week. The proposal includes moving the access approximately ¼ mile north, and then funneling bicycle and pedestrian traffic along a narrow 10 foot access road (Exhibit B) intended to be used by One Water maintenance trucks.

The pedestrian pathway will be shared with water agency's maintenance vehicles several times during weekdays, and less frequently on weekends. Pedestrians will have no place to stand to allow the trucks to pass. There isn't space to adequately widen the access road because of topographical and bridge support constraints.

The busway will also eliminate an important vertical access pathway. Coastal access is currently compliant with the Marina LCP and California coastal policies that requires vertical access to the closest road. When the Marina LCP was adopted, access was provided by a round-about path from Lake Court. However, the LCP called for a pathway to the Highway 1 recreation path that was eventually developed. This important pathway will be eliminated by the SURF Busway and will now require recreational users from the South to make 1/3 mile detour to gain access to the beach and to Fort Ord Dunes State Park. Relocation and infeasible sharing of the pathway access with One Water will violate LCP coast access policies by impeding travel. Retaining the crossing over the busway at its present location does not appear possible do to space constraints that make passage hazardous.

Exhibit A Trail Overview Map



Exhibit B

Popular recreational trail connection to the beach is proposed to be removed to accommodate the busway.

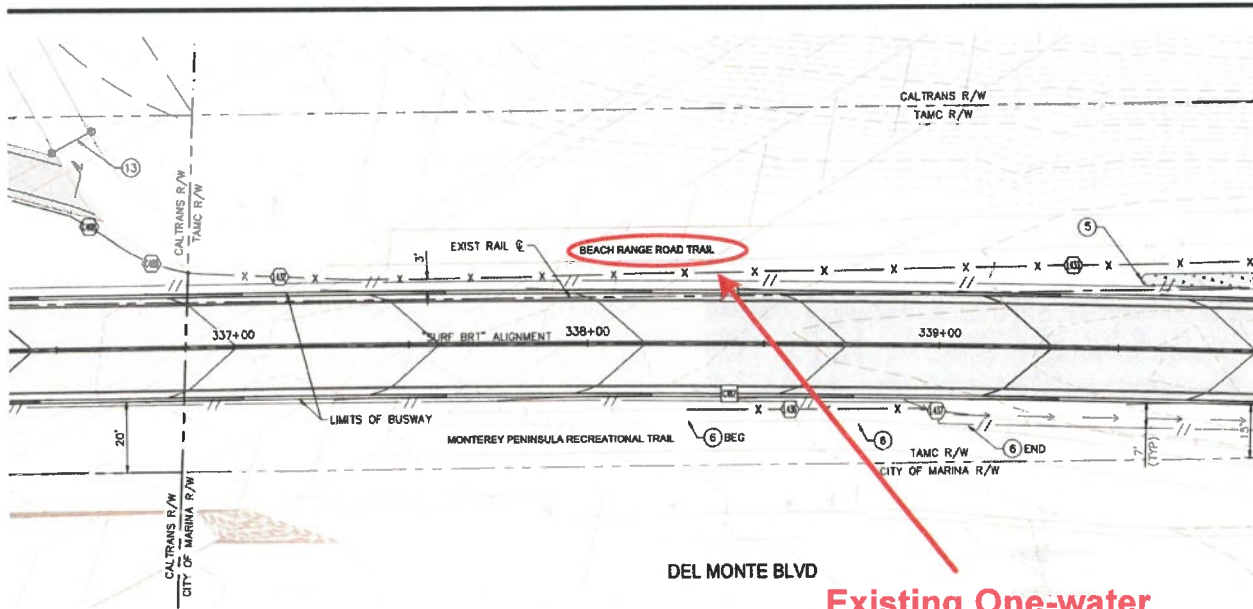


10 foot access road that will be shared for pedestrian access and One Water vehicles accessing wastewater pumping plant.

Looking South towards Sand City

Exhibit C

Site Plans

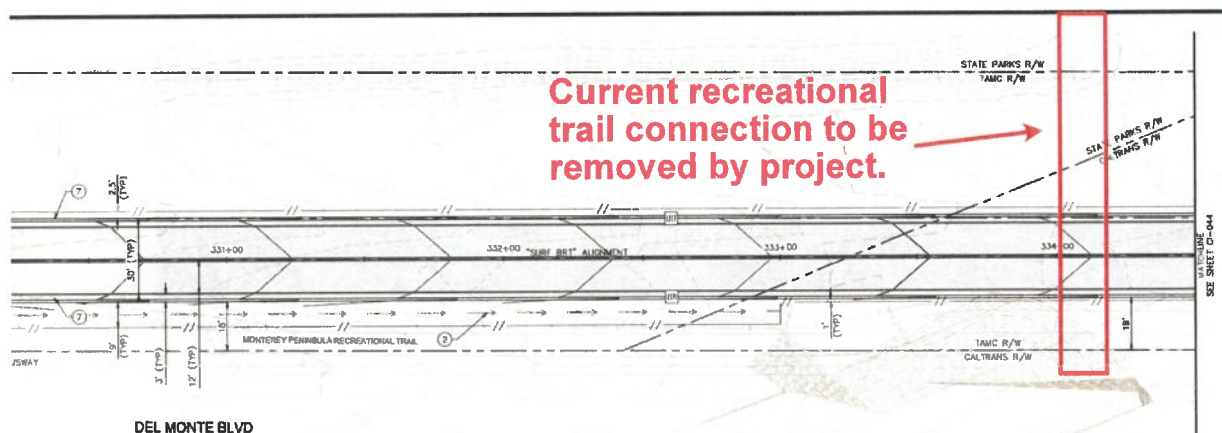


PLAN

GENERAL NOTES

1. FOR HORIZONTAL CONTROL AND ALIGNMENT GEOMETRY INFORMATION SEE HC DWGS.
2. FOR SECTIONS SEE CX AND TX DWGS.
3. FOR RETAINING WALL DETAILS SEE RW DWGS.
4. FOR RAIL REMOVAL LIMITS SEE DN DWGS.
5. ALL GEOMETRIC LABELS REFER TO FACE OF CURB, CURB AND GUTTER, GUARD RAIL, EDGE OF DIKE, CENTERLINE OF FENCE, OR BACK OF WALK. SEE CI-301 TO CI-308.

Existing One-water
service road will
become primary
access to beach



DEL MONTE BLVD

PLAN

GENERAL NOTES

1. FOR HORIZONTAL CONTROL AND ALIGNMENT GEOMETRY INFORMATION SEE HC DWGS.
2. FOR SECTIONS SEE CX AND TX DWGS.
3. FOR RETAINING WALL DETAILS SEE RW DWGS.
4. FOR RAIL REMOVAL LIMITS SEE DN DWGS.
5. ALL GEOMETRIC LABELS REFER TO FACE OF CURB, CURB AND GUTTER, GUARD RAIL, EDGE OF DIKE, CENTERLINE OF FENCE, OR BACK OF WALK. SEE CI-301 TO CI-308.

Exhibit C2

Appeal filed by Robert Solerno on behalf of Keep Fort Ord Wild (KFOW) on April 16, 2024

**APPEAL FORM**

Appeal to the Planning Commission: Review, report on, publish and perform staff work for an appeal of a staff decision to the Planning Commission.

Appeal to the City Council: Review, report on, publish and perform staff work for an appeal of a Planning Commission decision to the City Council.

Appeal to: ☐ Planning Commission ☒ City Council
 From Action of: PLANNING COMMISSION RESOLUTION NO. 2024-09
 Date of Action : 4/11/24

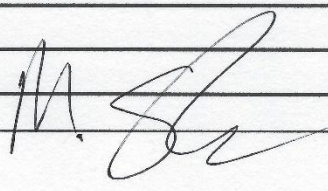
Appellant's:
 Name: Keep Fort Ord Wild
 Mailing Address: 3209 Susan Ave. Marina CA 93933
 Phone (Business): _____ Phone (Home): 831-224-5357
 Appellant's Interest: Local Community Group

Appellant's Reason for Appeal:

Reasons for appeal shall pertain to factual information considered by the last reviewing body. No new factual information may be submitted.

Please see attachments sent to City 4-18-24

mlsalerno3209@comcast.net

Appellant's Signature:  Date: 4/18/24

FOR OFFICE USE ONLY:

DATE APPEAL SUBMITTED _____	APPEAL NUMBER: _____
FEE COLLECTED \$ _____	RECEIPT NUMBER _____
ORIGINAL APPLICATION NUMBER _____	PLANNER INITIALS: _____



April 18, 2024

To: City of Marina

From: Keep Fort Ord Wild

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

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

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

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

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

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

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

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

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

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

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

Project is Impossible Under Proposition 116

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

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

Planning Commission Relied on a CEQA Exemption That Does Not Apply

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

Inaccurate Claims re: Improved Coastal Access and Recreation

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

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

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

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

Request:

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

Sincerely yours,

Michael Salerno

Spokesman, Keep Fort Ord Wild.

May 3, 2023

Mr. Carl Sedoryk
General Manager/CEO
Monterey-Salinas Transit
19 Upper Ragsdale Drive, Suite 200
Monterey, CA 93940

**Subject: Coastal Development Permit (CDP) Application Number 3-23-0288
(MST SURF! Busway)**

Dear Mr. Sedoryk:

We received the above-referenced CDP application that you submitted on April 3, 2023. The proposed project includes the construction of a segment of dedicated busway measuring 2.5 miles long and 30 feet wide located seaward of Highway 1 in the TAMC Monterey Branch Line rail corridor right-of-way, in Monterey County. We would first like to reiterate that Coastal Commission staff is highly supportive of MST's objectives related to improving public transit access for under-resourced communities and reducing greenhouse gas (GHG) emissions. We also believe that bus rapid transit has an important role to play in decarbonizing California's transportation sector, providing for effective multi-modal transportation options, and improving public access to the coast; we commend MST for their commitment to advancing these goals.

We have reviewed the materials that you have submitted to date and are in need of additional information to adequately analyze the proposed project for Coastal Act conformance. Towards this end, we are unable to file this application until the following is submitted:

- 1. Demonstration of Need:** Thank you for describing how the project intends to serve under-resourced communities and for providing the traffic study and corresponding estimates of ridership, vehicle miles traveled (VMT), and GHG emission reductions. For us to best understand and evaluate the public need for and benefits of the project in a CDP and Coastal Act context, we are in need of additional supporting documentation. Such documentation should include but not be limited to the rationale behind the estimates of ridership used in the traffic study, and the associated reductions in VMT and congestion. Please provide supporting evidence and a descriptive breakdown of the projected 10-minute travel time for buses using the proposed busway. Please also provide an analysis that compares the proposed project to current travel time for existing bus services, and for cars traveling along the same route during both low and high levels of congestion. Please describe and provide supporting evidence for the current level and timing of congestion along this segment of Highway 1, as well as projected future congestion on Highway 1 with and without the project.

2. Alternatives Analysis: Thank you for providing an alternatives analysis for the no project alternative, the bus on shoulder alternative, the Recreational Trail replacement alternative, the single lane busway alternative, the railroad track replacement alternative, and the brief discussions of a Highway 1 auxiliary lane, an HOV lane, a hybrid of different alternatives, and the use of existing surface streets. However, given the large scope of the proposed project and the expected adverse impacts to coastal resources, a more thorough qualitative and quantitative alternatives analysis that explores all possible options to avoid such impacts is necessary for the Commission to evaluate the project. Alternatives should be on even footing with the proposed project, including a consistent use of zero emission buses across alternatives unless there are feasibility constraints for zero emission buses for project alternatives that do not exist for the proposed project. Specifically:

- a. Please describe and show on a site map how each alternative will impact ESHA and the duration of those impacts, including the area of ESHA that will be directly covered by new development. For each alternative, please describe how ESHA impacts would be mitigated.
- b. Please provide estimates for bus ridership, VMT, and Highway 1 congestion impacts for each alternative, along with supporting evidence for those estimates.
- c. Please clarify why the single lane busway alternative includes an 11-foot breakdown shoulder along the length of the busway. Please also provide an updated single lane alternative that minimizes the width of the busway as much as possible over as much of the proposed alignment as possible.
- d. Please add an inland alignment alternative that includes the construction of a new busway or other improvements to bus infrastructure outside of the coastal zone. On this alternative, please evaluate the feasibility of an alignment that utilizes existing surface streets, or a combination of existing streets and new dedicated busway, and other public transit enhancements such as street light priority signalization, bus-on-median, dedicated stops/platforms, etc. (e.g., service similar to the recently completed Van Ness Avenue BRT in San Francisco). Such analysis should consider how such an alignment could offer service in close proximity to job/housing centers, including at CSUMB, the VA hospital, and planned development on former Fort Ord property, and how this alignment would compare with the proposed project in terms of ridership.
- e. Please add a bus-on-median alternative that takes advantage of the wide median through this section of Highway 1, including whether new dedicated on- and off-ramps in the median could be constructed to provide for easy access to a median-located busway. This alternative should also

compare the relative value of the habitats present in the median as compared with the proposed project.

- f. Thank you for providing information on the feasibility associated with a bus-on-shoulder alternative. While the application materials specified that CHP and Caltrans are not supportive of this approach, we would note that a bus-on-shoulder project is currently being constructed on Highway 1 in Santa Cruz County. Please explain why the bus on shoulder is feasible and supportable on this other section of Highway 1, but not at this location.
 - g. Please more thoroughly evaluate hybrid approaches to improving bus service in this area. One hybrid option that is worth consideration is a Highway 1 bus-on-shoulder or bus-on-median from the northern start of the proposed busway at Del Monte Boulevard to Imjin Parkway, then the use of 1st or 2nd Avenues, until re-entry onto Highway 1 at Lightfighter Drive and a continuation of bus-on-shoulder or bus-on-median down to Fremont Boulevard.
- 3. Other Permit Approvals:** The proposed project is a 2.5-mile segment of a larger 6-mile long project, the remainder of which falls within the Local Coastal Program (LCP) jurisdiction of the cities of Marina and Sand City, as well as portions outside the coastal zone in those cities as well as the City of Seaside. As a standalone project, this 2.5-mile long segment would not constitute a viable busway or meet any of the overall project goals, meaning that for any project benefits to be realized the other segments and elements of the busway must also gain the necessary CDPs and other approvals from local governments. This presents unique analytical and procedural challenges, as there are no guarantees that the other segments of the project will receive the requisite approvals from the local governments. Relatedly, an additional complicating factor to our analysis is that many of the application materials do not differentiate between the 2.5-mile segment within the Coastal Commission's original jurisdiction (and thus the area subject to this CDP application), and the project as a whole. For example, the alternatives analysis does not differentiate between ESHA impacts for the whole 6-mile project and this 2.5-mile segment for any of the alternatives evaluated.

As such, the project requested in this CDP application poses some difficult evaluation questions, including how this component will relate to other project components that fall within other jurisdictions.

- a. Please describe and quantify which parts of the project fall within each LCP jurisdiction, including the amount of dune habitat disturbance and proposed mitigation (see below) in each jurisdiction.
- b. Please provide information regarding the permitting status and intended timeline of the portions of the project that are subject to local government approvals, including information regarding the local CDP permitting

process, as well as all other required local approvals/permits (e.g., CEQA authorizations, other local discretionary permits, building/grading permits, etc.). We would also like to know, at a minimum, the preliminary receptiveness from each local government on the project in their jurisdiction, including whether there have been any controversies or questions raised, alternative routes and configurations requested for evaluation, etc. Please provide an overview of the CDPs and other permits needed for the project as whole, including what outreach has been done to date to garner public participation, and any significant comments made by members of the public and local decisionmakers.

- c. Please also provide verification of all other necessary permits, permissions or approvals applied for or granted by other public agencies such as the U.S. Army Corps of Engineers, California Department of Fish and Wildlife, California State Parks, Caltrans, and the U.S. Fish and Wildlife Service, or evidence that no such approvals are necessary from these agencies.

Once we have received this information, we may have more questions about the project's substantive and procedural issues and can discuss them with you at that time.

4. Impacts to Environmentally Sensitive Habitat Area (ESHA): The 2.5-mile segment of busway requested in this CDP application is sited entirely within ESHA as defined by the Coastal Act, and there are ESHA impacts for sections of the project within the LCP jurisdictions of Marina and Sand City.

- a. Please describe the method used to calculate ESHA impacts and show on a site plan all areas of expected ESHA impacts. Please differentiate between short-term temporary, long-term temporary, and permanent impacts as defined in the attached memo from Coastal Commission Senior Ecologist Dr. Lauren Garske-Garcia. While the memo was not written for this project, it describes the Commission's general approach for ESHA mitigation. Please also indicate the total acreage of ESHA that will be covered by new development, as well as the potential off-site/indirect impacts associated with lighting, noise, and other operations on dune habitat.
- b. Please provide a mitigation plan for all impacts to ESHA that documents where and how identified ESHA impacts are to be mitigated. The most recent Coastal Commission combined staff report regarding construction in dune ESHA in this area (A-3-MRA-19-0034 and 9-20-0603, Cal-Am Desalination, available on the Commission's November 17, 2002 archived agenda at: <https://www.coastal.ca.gov/meetings/agenda/#/2022/11>) provides a helpful reference for the nature of mitigation that the Commission has recently required. Please note that the Commission has adopted a 'no net loss' policy for this area of dune habitat, requiring dune habitat creation at a 1:1 ratio for all dune habitat covered by permanent

development (see Special Condition 8.c). Regarding mitigation ratios, Dr. Garske-Garcia's memo provides helpful guidance on the variability of ratios depending on the type of restoration activities performed. Of particular note, the minimum mitigation ratio for short-term temporary ESHA impacts is 1:1, for long term impacts it is 1.5:1, and for permanent impacts it is 3:1 (which includes the 1:1 dune habitat creation described above, with a remainder of 2:1 for all other permanent impacts). Depending on the type of mitigation employed, these ratios may also be doubled or tripled.

5. **Public Access During Construction:** Please describe, and show on a site plan, the existing public access at and adjacent to the site, including as related to the Monterey Peninsula Recreational Trail and Fort Ord Dunes State Park, as well as how this will be maintained and/or closed during construction activities. If public access will be closed during construction, please describe why it will be necessary to close public access and the estimated duration of the closure(s).
6. **Public Access After Construction:** Please describe, and show on a site plan, the proposed post-construction public access at the site, including the nature and location of any changes or additions to bicycle and pedestrian access to and along Fort Ord Dunes State Park and the Monterey Peninsula Recreational Trail. Please include a detailed description of all bicycle and pedestrian crossings on the busway and how safety will be maintained at these crossings. Please also indicate any relocation of any bicycle and pedestrian infrastructure, any locations where there is no separation between the busway shoulder and the Recreational Trail, and any locations where there is less than 10 feet between the Recreational Trail and the Busway shoulder.
7. **Construction Plans:** Please provide complete details of the proposed construction, including: all heavy machinery proposed to be used and at which phases they are required, the construction staging area, the time and duration of construction and all of the proposed best management practices that would be employed to protect water quality and ESHA during construction.
8. **Drainage Plan:** The proposed project will lead to significant impervious coverage over coastal sand dunes which are highly susceptible to erosion. Please provide a drainage plan that clearly identifies all measures that will be taken to collect and direct site drainage. Please also describe and show on a site plan where drainage will be directed, including the location and type of any infiltration infrastructure, and indicate how erosion will be prevented during heavy rains.
9. **Mapping:** The proposed project covers a large area, and the maps provided either do not show adequate detail or are so zoomed in as to lack the overall context of the project. Please provide a highly detailed map overlaid onto satellite imagery, or shapefiles of the proposed project, that show in detail the locations of all proposed elements of the project including the busway, any modifications to the existing public access trails, and the location of proposed retaining walls.

- 10. Retaining Walls:** The proposed project includes a total of 5,920 linear feet of retaining walls. Please indicate the length of retaining walls proposed in this CDP application, excluding all retaining walls outside of the original permitting jurisdiction of the Coastal Commission. Please also provide visual simulations showing a typical section of the proposed retaining wall as seen from traveling north and south on both Highway 1 and the Monterey Peninsula Recreational Trail.
- 11. Fencing:** Under the 'Construction Impacts' section of the CDP application package, the final bullet point mentions fencing but no additional information regarding proposed fencing is provided. Please describe the location, height, and type of any permanent fencing proposed for installation. Please also describe any signage or other measures intended to keep pedestrians and bicyclists off the Busway.
- 12. Parking:** Please provide additional details on the parking at the 5th Street station, including as related to cost, availability to the general public (i.e., will it be available for just bus riders or the general public, including users of the Recreational Trail and State Park?), and hours of operation.
- 13. Zero Emission Vehicles:** Please clarify the status of proposed usage of zero emission vehicles on the busway. Will zero emission vehicles be exclusively used on day one of the operation of the busway? If the busway is only a section of a much longer route that buses will take between Salinas and Monterey, will MST have an adequate number of zero emission buses to run the entirety of that route without requiring passengers to disembark from fossil fuel power vehicles and transfer to zero emission vehicles before traveling on the busway?
- 14. Other Vehicles:** Please clarify if any other vehicles, including emergency services or vehicles used for special events (shooting a movie, etc.), will ever be permitted on the busway aside from those necessary for maintenance.
- 15. Future Rail Service:** Please further describe the impacts the project will have on the existing railroad tracks, including where and how much track will be removed and any impacts to the structural integrity of the tracks caused by grading and retaining walls adjacent to the tracks. Please also describe the future compatibility of the busway and rail service if funding were secured to restore rail service along the corridor; would the busway and rail service be able to provide service simultaneously given the currently proposed configuration of the busway? Would future rail service require the termination of bus service? Overall, how would the construction of the proposed busway impact the feasibility of future rail service? Please describe and provide any relevant documentation regarding any commitments or legal restrictions relating to the future use of rail in the TAMC corridor and the preservation of the railroad tracks, if any such commitments or restrictions exist.
- 16. Public Outreach:** please provide a comprehensive summary of the public outreach that has been conducted relating to the project, including the

communities that were engaged, the extent of public participation, and when outreach activities occurred.

- 17. Public Access Signage:** Please clarify the type and nature of signage to be installed at the 5th Street station for “social equity reasons” (described on page 28 of the supporting materials and required attachments document submitted with the CDP application).
- 18. Appendix B (Local Agency Review Form):** Please have a member of Monterey County planning staff complete and sign Appendix B and return the completed form to our office.
- 19. Appendix C (Mailing List) and Envelopes for Noticing:** Please submit a revised mailing list (Appendix C) that includes the addresses for all property owners and occupants for each property ***located within 100 feet (excluding roads) of the property lines*** of the entire project site, including areas outside the Coastal Commission’s original jurisdiction. In addition to the 100-foot addressees, please also supplement the mailing list with addressees organized by and corresponding to: (a) all other parties known to be interested in the proposed development (e.g., persons expressing interest at local hearings, advisory committee meetings, during CEQA review, etc.); (b) the Monterey County Department of Housing and Community Development; and (c) all contacts from consultations with other applicable regulatory agencies (e.g., State Parks, CDFW, ACOE, USFWS, NMFS, RWQCB, etc.). Please provide stamped envelopes for each person or agency on the mailing list. The envelopes must be #10 envelope: no window, no return address, square flap, NOT self-seal with forever stamps (not 1st class). Finally, to the extent that multiple hearings are noticed for this matter, you will need to submit new sets of stamped envelopes for each subsequent hearing after the first. Please also provide written evidence that you will submit such additional envelopes, if necessary, upon request in the future.
- 20. Appendix D (Declaration of Posting) and Posting Notice:** Please fill out the enclosed “Notice of Pending Permit” forms and post and maintain the notices where they will be conspicuously visible to the public including, at a minimum, at the northern end of Beach Range Road before it passes under Highway 1, the northern end of the Recreational Trail before it passes under Highway 1, the intersection of Beach Range Road and 8th Street, the intersection of the Recreational Trail and the path that runs under Highway 1 by 5th Street, the intersection of 1st Street and Beach Range Road, and the southernmost end of Beach Range Road where it intersects the Recreational Trail. All notices: (a) must be weatherproofed (e.g., laminated or otherwise covered in plastic) in the event of inclement weather; such weatherproofing must not make the notices difficult to read; and (b) must be posted at a readable height (i.e., three to five feet or so) against a solid background at least as large as the notice (e.g., an 8½" x 11" piece of plywood attached to a stake). Once the notices are posted, please submit a graphic showing all notice locations (in site plan view), and please submit photographs of such notices keyed to the site plan. All of the notices must

remain posted as described until the Commission makes a decision on the proposed project. Any notices that become unreadable or are missing (for whatever reason) must be immediately replaced. When the site has been posted, please complete Appendix D (Declaration of Posting) and return this completed form to our office. Please note that additional posting may be necessary when this item gets closer to being scheduled for a hearing in front of the Commission. Please provide written evidence that you will commit to such posting when and as directed in the future.

We will hold the application for six months from today's date (i.e., until November 3, 2023) pending receipt of these materials. After all of the above-listed materials have been received, the package will again be reviewed and will be filed if it contains materials sufficient for a thorough and complete review. Please note that there may be additional materials necessary for filing purposes depending upon the nature of the information provided pursuant to the above-listed materials. If all of the above-listed materials are not received within six months, CDP Application 3-23-0288 will be considered withdrawn and will be returned to you. This submittal deadline may be extended for good cause if such request is made prior to November 3, 2023. I look forward to working with you on this project. Please do not hesitate to contact me at Breylen.Ammen@coastal.ca.gov or (831) 427-4863 if you have any questions regarding the above information requests.

Sincerely,



Breylen Ammen
Coastal Planner
Central Coast District Office

Cc: Todd Muck, Michelle Overmeyer, Lisa Rheinheimer, Tad Stearn, Peter Meyerhofer

Enclosure

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV

**SENT VIA ELECTRONIC MAIL****May 10, 2021**

Michelle Overmeyer
Director of Planning & Innovation
Monterey-Salinas Transit
19 Upper Ragsdale Drive, Suite 200
Monterey, CA 93940

Re: Monterey-Salinas Transit Busway Project

Dear Ms. Overmeyer:

Thank you for the opportunity to provide comments on the proposed Monterey-Salinas Transit (MST) Busway Project in north Monterey County. Please provide these comments to the MST Board Members prior to today's meeting on the project and please include these comments in the administrative record for the project.

The Coastal Commission has worked diligently over many years to develop strategies to maximize public transit opportunities and to reduce carbon emissions and reliance on fossil fuels, including to help counter the effects of global climate change and the resulting impacts from sea level rise. Thus, at a broad level, we are generally supportive of projects that can help increase our overall resiliency through development of public transit projects such as this. At the same time, however, such support only extends as far as such development can be achieved in a manner that is consistent with the California Coastal Act and with the applicable Local Coastal Programs (LCPs). It is within this context that we provide the following comments.

Outreach

We understand that MST has undertaken some outreach to the public and relevant stakeholders to solicit public comment for the proposed transit project, including via today's meeting. However, from our discussions with the public and other stakeholders it appears that there is limited understanding of the proposed project, and thus it appears that potential interested parties may not have been thoroughly engaged, especially in light of COVID-19 and the associated difficulty for the public to ask questions and receive answers on the proposal in a meaningful way. **We strongly recommend that the MST Board not take action on the project today** and instead recommend that MST staff redouble its efforts to reach out to affected communities by scheduling multiple/repeat informational and educational webinars, including at a minimum presentations through regular City Council and Board of Supervisor virtual meetings (and in-person meetings as soon as possible) for all jurisdictions affected by the project going forward. We also strongly believe that the process should be extended to allow more time to discuss and evaluate project alternatives with affected cities and entities that address regional public transportation needs in a manner that protects

MST Busway Project Comments

coastal resources and is approvable under the Coastal Act and applicable LCPs. See more discussion in the “ESHA” section below.

Jurisdiction

A significant portion of the project lies within the Transportation Agency of Monterey County’s (TAMC’s) right-of-way on the former Fort Ord military base seaward of Highway 1. The entire area west of the highway is within the Commission’s retained permitting jurisdiction and a coastal development permit (CDP) from the Commission will be required for any development within this area. The standard of review will be the Coastal Act. Also, as we understand it, other elements of the project fall within the purview of adjacent local governments (e.g., Marina, Sand City, Seaside, and Monterey County) and separate CDPs for those project elements will be required from those respective jurisdictions. The certified LCPs will be the standard of review in those locations. In certain limited cases where a project has split CDP jurisdiction, the Commission has the ability to process a consolidated CDP as opposed to separate CDPs (and potential appeals), provided the applicant, the local government, and the Commission’s Executive Director all agree to such processing and when public comment and participation will not be substantially impaired. While consolidation is a potential vehicle to process the CDP, we believe it is too early in the process to determine whether it is appropriate to do so, including because there are substantive coastal resource issues that first need to be addressed prior to a determination of how the permitting process should be undertaken, all as described in more detail below.

Environmentally Sensitive Habitat (ESHA)/ Project Alternatives

The IS/MND notes that the majority of the alignment (roughly five miles) of the busway project would be within TAMC’s Monterey Branch Line rail corridor right-of-way, an approximately 100-foot- wide corridor located between the Fort Ord Dunes State Park recreational trail (i.e., Beach Range Road) and the Caltrans right-of-way recreation trail, both of which are located seaward of Highway 1. More specifically, the alignment would be located mainly in the sand dunes area seaward of the TAMC rail corridor right-of-way and would deviate from this general alignment only when necessary to avoid bridge under-crossings and other similar obstacles. The IS/MND describes the TAMC rail corridor as heavily disturbed but also wide enough to support native and non-native plant communities. The IS/MND acknowledges that sensitive habitats exist in this area of the coastal zone, which includes the underlying sand dunes within the TAMC right-of-way, and focuses on providing mitigation for project-specific impacts to known rare and/or sensitive plant and animal species. The IS/MND only evaluates the busway on the Monterey Branch Line rail corridor right-of-way alternative.¹

¹ MST in conjunction with TAMC and other stakeholders, prepared a Bus-on-Shoulder/Branch Line Feasibility Study in 2018 to respond to growing traffic congestion and delays on State Route 1 in Santa Cruz and Monterey Counties. The study evaluated several project alternatives. Determination of feasibility was based primarily on annual ridership, time savings, total capital cost, and reduction in vehicle miles traveled. Environmental impacts were scored as either significant, possibly significant, or not significant. There was no quantification of impacts in terms of habitat loss or disturbance, no discussion of necessary mitigations or costs associated with mitigations, and these costs did not enter into the feasibility equation.

MST Busway Project Comments

Coastal Act Section 30240 provides for the protection of ESHA, including sensitive dune habitats such as those found at the former Ford Ord and within the TAMC right-of-way:

Section 30240 (a) environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas. (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The protections afforded by Coastal Act Section 30240 extend to both natural and degraded dunes, i.e., whether the dunes are covered in native dune plant species, ice plant, or base rock, including because of the inherent ability for degraded dunes to be restored. As noted in past correspondence to MST staff regarding this project, only resource-dependent uses that do not significantly disrupt ESHA are allowable in ESHA. The project description contained in the IS/MND identifies roughly five linear miles of two-lane roadway surface, drainage improvements, retaining walls, fencing, utility connections, traffic and safety controls, and operation of motorized bus service all within sand dune ESHA. The project would include roughly 22 acres of new impervious surface and approximately 23 acres of grubbing and grading, much of this in dune ESHA. A transportation infrastructure project like this is not an allowed use in ESHA and therefore is inconsistent with the Coastal Act and applicable LCPs. Additionally, based on the project description the proposed development will introduce additional traffic, noise, light, and general disturbance within and adjacent to sand dune ESHA, thereby also resulting in significant disruption of ESHA habitat values.

The currently proposed project is located in dune ESHA and is not resource dependent and is not approvable under Coastal Act Section 30240 or under the ESHA policies of the various LCPs that would apply to the project in the areas located outside of the Commission retained permitting jurisdiction. Furthermore, the project will include the construction and staging of equipment and materials, and it is not clear whether these activities will occur within the dunes; if so, those activities also have the potential to cause significant disruptions to adjacent habitat areas, inconsistent with Coastal Act Section 30240 and related LCP ESHA policies. Given the sensitive dune resources involved and the need to ensure that ESHA habitat values are appropriately protected, we recommend that MST prepare a comprehensive evaluation of a reasonable range of alternatives, including options that avoid impacts to dune ESHA, whether degraded or not, that the proposed new two-lane bus thoroughfare would present.² The analysis must quantify the impact for each alternative in terms of permanent and temporary habitat loss / disturbance, along with identification and recommendation of corresponding mitigation proposed for each alternative. This level of analysis will be needed for Commission staff and City and County staffs to fully evaluate any project for

² At a minimum, the range of alternatives should include: 1) establishing bus service within the existing highway right-of-way via widening or use of an existing lane; 2) establishing an HOV lane in the right-hand lane of Highway 1; 3) commuter rail on the existing rail alignment; 4) utilizing surface city streets to accommodate bus rapid transit.

MST Busway Project Comments

Coastal Act and LCP consistency, and our Commission will expect this analysis to be present in the staff report for any project.

Public Access and Recreation

Coastal Act Section 30240(b) requires that development sited adjacent to parks and recreation areas shall be sited and designed to prevent impacts that would substantially degrade those areas. Based on the project description contained in the IS/MND, the proposed busway transit project would include roughly five linear miles of two-lane roadway surface, drainage improvements, retaining walls, fencing, utility connections, traffic and safety controls, and operation of motorized bus service immediately adjacent to an important park and recreation area, i.e. Fort Ord Dunes State Park, where it is clear the effect will be a significant degradation of the park experience, inconsistent with Coastal Act Section 30240(b). The proposed development will introduce additional traffic, noise, light, and general disturbance well beyond the physical development location and much closer to important park recreational amenities (e.g., the portion of the recreation trail located on Fort Ord State Park property) than the current commotion originating from Highway 1 in this area. The busway would be visible from the same public recreation trail and the Commission-approved Fort Ord Dunes State Park campground. Please also see the letter from the California Department of Parks and Recreation (dated April 11, 2021), in which State Parks' staff describes a myriad of impacts to Fort Ord Dunes State Park from the project. In short, the proposed project will result in significant coastal access and recreation impacts, including to Fort Ord Dunes State Park and the adjacent recreation trail, and thus the proposed project is inconsistent with Coastal Act Section 30240(b) and cannot be approved.

Public Views

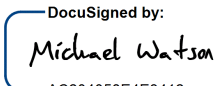
The Coastal Act protects public views "as a resource of public importance," where development is required to be sited and designed to protect views to and along the ocean, to be visually compatible with the character of surrounding area. The IS/MND suggests that although the views of coastal Fort Ord could be considered scenic, these same vistas are not significantly affected or compromised by the project.

Visual renditions from Highway 1 provided with the IS/MND are clear in that buses traveling within the rail right-of-way will be visible during both day and night, and will be especially noticeable during the night due to bus lighting. As proposed, the sweeping unobstructed views of the highly scenic Fort Ord coast would now include additional permanent facilities that would be visible during day and ongoing bus travel that would be visible day and night, significantly degrading said views. These impacts are certain to occur no matter whether an alternative is chosen within the Caltrans or TAMC right-of-way. However, views from the Fort Ord recreational trail would more likely be significantly impacted by the busway development in the TAMC right-of-way, which would be in some instances merely feet away from the trail. Likewise, views from the campground would suffer from a similar increase in visual detractions. Accordingly, we strongly recommend that MST adopt an alternative that avoids and/or minimizes the amount of new paving and infrastructure needed to initiate service, and realigns the bus service in closer proximity to the existing highway right-of-way, i.e. away from the Fort Ord recreation trail and the Commission-approved Fort Ord State Park campground.

MST Busway Project Comments

In conclusion, although we are supportive of strategies to maximize public transit opportunities and to reduce carbon emissions and reliance on fossil fuels, the current proposal cannot be found consistent with the Coastal Act or with the applicable LCPs. We strongly suggest that MST take a pause on this project to develop a public process to evaluate alternatives that will not result in the range of significant coastal resource impacts described herein. We are available for consultation as you proceed forward.

Regards,

DocuSigned by:

AC204058E4E3412...

Mike Watson
Coastal Planner
California Coastal Commission

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060-4508
PHONE (831) 427-4863

**December 29, 2023**

Mr. Carl Sedoryk
General Manager/CEO
Monterey-Salinas Transit
19 Upper Ragsdale Drive, Suite 200
Monterey, CA 93940

**Subject: Coastal Development Permit (CDP) Application Number 3-23-0288
(MST SURF! Busway)**

Dear Mr. Sedoryk:

We received the above-referenced CDP application that you submitted on April 3, 2023, and we received your response to our two filing status letters on July 28, 2023 and December 1, 2023. We appreciate the thorough and extensive work that has been done to fulfill our requests for additional materials; what we have been provided has overall effectively answered most of our questions and provided most of the materials we need to bring the project to hearing. That said, we still require a few additional materials:

- 1. Mapping and Land Ownership.** Our last filing letter requested additional mapping, including to show property ownership on the Sand City end of the project. The mapping provided in your December 1, 2023 submittal does not clearly show such property boundaries and instead shows "Private R/W" on Sheet DM-002. And although the mapping/plans provided begin at the Sand City city limit, it would be helpful to see the entirety of the alignment (including outside the Commission's permitting jurisdiction), especially on the southern end, to fully understand the location of the project in relation to property boundaries, rights-of-way, and roadways in this area. Please provide these details.
- 2. ESHA Impact Areas.** Our last filing letter requested updated ESHA impact calculations. MST's responding materials include a memo discussing impacts and providing calculations. Overall, the memo includes the type of information that we require, however, two things must still be clarified. First, we would note that the Commission's ecologists have determined that vegetated areas of the railroad tracks and ballast still constitute ESHA, including because rare dune plant individuals have been identified within the tracks, and as such should be accounted for in the calculations. And second, grading would typically be considered significant ground disturbance and thus a permanent rather than a long-term temporary impact, even if graded areas are not paved. Please either adjust the impact calculations accordingly or provide additional information demonstrating the proposed grading would be more appropriately considered a long-term temporary impact.

3-23-0288 (MST SURF! Busway)

We will hold the application for six months from today's date (i.e., until June 29, 2024) pending receipt of these materials. After all of the above-listed materials have been received, the package will again be reviewed and will be filed if it contains materials sufficient for a thorough and complete review. Please note that there may be additional materials necessary for filing purposes depending upon the nature of the information provided pursuant to the above-listed materials. If all of the above-listed materials are not received within six months, CDP Application 3-23-0288 will be considered withdrawn and will be returned to you. This submittal deadline may be extended for good cause if such request is made prior to June 29, 2024.

In addition to the materials requested above that are required for filing purposes, we would like to bring another issue to your attention. We have begun the more detailed review of project materials necessary to write our staff report and recommendation on the project. This more detailed review of the application has revealed what appears to be an error in the project description and mapping materials. The application is for the 2.5-mile segment outside of the Sand City and Marina city limits, however much of the project that is in the coastal zone within Marina city limits is actually not within Marina's certified LCP area, and thus the Commission has jurisdiction over those areas as well. Specifically, the portion of the City's coastal zone from the southern city limit to approximately the Del Monte Boulevard/Highway 1 junction was never certified and remains within what our mapping records indicate as "City of Marina – Fort Ord Transfer Area Uncertified Area (UA)," like the segment of the alignment south to Sand City. In other words, all project areas seaward of Highway 1, except those within the Sand City certified LCP area, are within the Commission's retained permitting jurisdiction. This means that an additional approximately 1.9 miles of the proposed busway is in the Commission's jurisdiction for a total of approximately 4.4 miles. We apologize for missing this error and not identifying it earlier. For a complete project description in the CDP application and accurate accounting of the project, we require the following updated materials from you as soon as possible:

1. **Updated Project Description.** Please provide an updated project description reflecting the full scope of work within the Commission's permitting jurisdiction.
2. **Updated Mapping.** Please provide updated mapping accurately reflecting the project area within the Commission's permitting jurisdiction, including an extension of the plans overlaid onto satellite imagery to include this new area.
3. **Updated ESHA Impact Areas.** Please provide updated ESHA impact calculations that include all project areas subject to the Commission's permitting jurisdiction.
4. **Updated Mailing List and Public Noticing.** Please post updated public notices reflecting the full scope of the project before the Commission. The current notices state that the application is for a 2.5-mile long segment of the busway which we now know is not accurate.

Please do not hesitate to contact me at Breylen.Ammen@coastal.ca.gov or (831) 427-4863 if you have any questions.

3-23-0288 (MST SURF! Busway)

Sincerely,

Breylen Ammen

Breylen Ammen
Coastal Planner
Central Coast District Office

Cc: Todd Muck, Michelle Overmeyer, Lisa Rheinheimer, Tad Stearn, Peter Meyerhofer