

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400



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June 4, 2004

To: Coastal Commissioners and Interested Persons

From: Peter Douglas, Executive Director
Charles Lester, Deputy Director
Tami Grove, Development and Transportation Liaison

Subject: Memorandum of Understanding (MOU) related to the transfer of Martini Bypass Lands in San Mateo County from Caltrans to the Department of Parks and Recreation

MOU Background

Devil's Slide, a steep and unstable landslide area of State Highway 1, lies south of the City of Pacifica and has been chronically subject to closures due to rock and mud slides since its opening in the late 1930's. For decades, a longer-term solution for avoiding the delays and costs associated with the road closures and repairs has been sought. In the late 1950's, Caltrans' predecessor, the California Highway Commission adopted a bypass alignment to the east of Devil's Slide over Montara Mountain, that has become known as the Martini Creek bypass. Over the next twenty years, Caltrans acquired properties making up this bypass alignment, including a swath of property that now bisects the McNee Ranch area of Montara State Beach.

When the County of San Mateo's Local Coastal Program (LCP) was certified in 1981, it contained provisions to allow for a two-lane bypass and referred to the Martini Creek alignment as a preferred route. Following lengthy road closures in the 1980's and 1990's, increased attention was given to building a bypass to Devil's Slide. At the same time, local citizens and local, state and federal agencies gained a better understanding of the environmental, scenic, and recreational impacts that would result from the building of a highway through the Martini Creek alignment. The public debate that ensued over the pros and cons of various alternatives, culminated in the passage of Measure T, the Devil's Slide Tunnel Initiative, by an overwhelming majority of San Mateo County voters in 1996.

Measure T directed that the bypass be constructed through a tunnel behind Devil's Slide, and that the construction of any other bypass, including on the Martini Creek alignment, not be allowed without the future approval of the voters. To implement Measure T, the County submitted an LCP amendment to the Coastal Commission that provided for the tunnel alignment (LCP Policy 2.54), deleted references to the Martini Creek alignment, and rendered ineffective any other LCP provision to the extent it is inconsistent with Measure T. The Commission certified the amendment, finding that the tunnel was the least environmentally damaging alternative right-of-way and would have significantly fewer adverse effects on the environmental, scenic, and recreational resources of the area. Accordingly, the Martini Creek bypass was eliminated as an option by the LCP amendment.

The adoption of a LCP amendment that requires a tunnel project as a way to bypass Devil's Slide instead of the Martini Creek alignment has now made the old Martini Creek bypass lands redundant as a

Devil's Slide Martini Bypass MOU

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transportation corridor. State Parks has long expressed a desire to acquire this land to add to its existing McNee Ranch parklands at Montara State Beach. The transfer of these lands to State Parks would ensure that the substantial environmental, scenic, and recreational resources of these lands are protected as required under the County's LCP and the Coastal Act.

Because of the variety of coastal resources that could be affected, and in order to ensure that the tunnel project is in fact the least-environmentally damaging alternative, Commission staff has been very concerned about the issue of the ultimate disposition of the Martini Creek alignment as it has tracked the coastal consistency, environmental and permit reviews of the tunnel project. Local community groups also have informed Commission staff that they share these concerns and will be expressing their support for legislation to authorize the transfer of the coastal zone properties to State Parks.

Commission staff believes that the protection of the Martini Creek bypass lands could appropriately be addressed through the ongoing coastal development permit and federal consistency reviews and has held several discussions with Caltrans and State Parks on this issue. Caltrans has strongly advocated an alternative approach through this MOU and authorizing legislation that would bring the same result of protecting the coastal resources of concern by transferring the Martini Creek bypass lands to State Parks. In the spirit of promoting a good working relationship with fellow state agencies, and with the understanding that this alternative approach must bring the actual results of State Parks taking ownership of the bypass land, Commission staff has agreed to participate in this process.

Therefore, in tandem with developing the tunnel project, Caltrans has worked with State Parks and Coastal Commission staff on this Memorandum of Understanding to provide for the transfer of the Martini Creek bypass lands to State Parks. As part of this agreement, legislation is also being developed that would authorize the sale and transfer of those properties in the coastal zone at their original acquisition costs for park purposes, as provided by Section 9 of Article XIX of the California Constitution. If the MOU and the proposed legislation result in the final transfer of the Martini Creek bypass lands to State Parks then they will also function as an alternative implementation of the intent of the Devil's Slide Tunnel Initiative, including LCP Policy 2.54.

Basic Provisions of the MOU

In summary, the MOU's ten provisions are:

1. State Parks and the CCC will work cooperatively, in consultation with Caltrans, to pursue the above-referenced legislation, which is drafted and attached to the MOU as Exhibit 2.
2. State Parks commits to the purchase of the properties in the coastal zone (Area A in Exhibit 2) and a remainder area outside the coastal zone (Area B in Exhibit 2); State Parks will consider acquiring other lands outside the coastal zone (Area C in Exhibit 2) depending on the results of an appraisal process.
3. Area B is recognized as having a reduction in value because it is a remote, steep remnant property without infrastructure.
4. Caltrans is reserving the right to access the transferred property for potential future mitigation sites (e.g for wetlands impacts of future highway projects) and will reimburse State Parks, on a pro rata basis, for any property actually used for such purposes.
5. Using their existing Land Bank agreement, Caltrans agrees to transfer Area A and B to State Parks for the original acquisition cost of \$823,268, upon the chaptering of the authorizing legislation. (Exhibit 3).

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6. In the event that Caltrans is unable to construct the Devil's Slide Tunnel, State Parks will return the Martini Creek bypass lands to Caltrans through the Land Bank agreement and both agencies will confer with the CCC to determine a mutually acceptable follow-up strategy.
7. If the appraisal process referred to in provision #2 results in a selling price for Area C agreeable to State Parks, they will enter into a separate Agreement for Transfer of Jurisdiction of State-Owned Real Property through the Land Bank agreement with Caltrans.
8. If future mitigation on the properties acquired by State Parks is pursued by Caltrans, these two agencies will jointly plan such activity pursuant to section 4(f) of the federal Department of Transportation Act.
9. It is recognized that the transfer of property agreed to under the MOU is subject to review and approval by the California Transportation Commission and the Department of General Services.
10. In the event that the properties are not transferred to State Parks from Caltrans as contemplated by the MOU, the three signatory agencies agree to enter into a new agreement to provide an alternative means to facilitate the mutually-agreeable transfer of the Area A and Area B properties from Caltrans to State Parks or to explore other alternative options for the protection of scenic, environmentally sensitive, and public access resources within the Martini Creek property.

Staff Recommendation on MOU

The MOU is a framework agreement to guide the transfer of lands within the Martini Creek bypass from Caltrans to State Parks and thereby integrate the adjacent, currently fractured, McNee Ranch parklands of Montara State Beach for park purposes consistent with the San Mateo County LCP and the Coastal Act. Staff recommends that the Commission approve this MOU and authorize the Executive Director to sign the agreement on behalf of the Coastal Commission.

Memorandum of Understanding
Between
State of California
Department of Transportation, Coastal Commission,
and
Department of Parks and Recreation
Regarding Martini Creek Bypass Property

This is a “Memorandum of Understanding” (MOU) between the State of California, Department of Transportation (“Department”), the California Coastal Commission (“CCC”) and the State of California Department of Parks and Recreation (“DPR”) involving the transfer of potential surplus property in San Mateo County from the Department to DPR. This Memorandum of Understanding constitutes solely a guide to the respective intentions and policies of the parties involved. It is not intended to authorize funding or project effort nor is it a legally binding contract. Funding commitments providing for the deposit of funds for specific work phases or project effort committing machine or personnel time will be covered by one or more separate cooperative or interagency agreements as may be outlined herein.

History and Background

State Route 1 (“SR1”) between Pacifica and Half Moon Bay was constructed in 1937. Since its construction, landslides have repeatedly closed a 600 foot section of this highway that has come to be known as “Devil’s Slide.” The landslides have resulted from a deep seated and large landslide which will be subject to major failure at some point, subjecting the road to an extended closure. The Department studied alternatives for roads that would bypass this portion of SR1 as early as 1958 and ultimately selected a bypass alignment to the east of Devil’s Slide over Montara Mountain. In 1960, the California Highway Commission (predecessor to the California Transportation Commission) adopted this bypass alignment as a State Route. Between 1969 and 1972 the Department acquired fifty-five percent of the right-of-way needed for the bypass alignment (the “Martini Creek property”). Due to litigation and lack of funding, efforts to design and construct the bypass stopped in 1975.

In the late 1970s, DPR began negotiations to purchase lands on both sides of the adopted alignment alternative, and in 1981 this land was purchased by the DPR to administer as part of the state park system. The park was initially named McNee Ranch Project and was later included as part of Montara State Beach. Land that the Department believed might be necessary for a bypass but that it had not yet acquired was excluded (from acquisition) at the Department’s request from the parcels of land that were acquired by DPR to form the park.

SR1 was extensively damaged in a major landslide at Devil’s Slide in 1983. Federal emergency relief funds were made available to affect repairs and construct the bypass. The Department began moving forward with development of the bypass. Environmental review was required under both the National Environmental Policy Act and the California Environmental Quality Act prior to final design and construction of the bypass.

The bypass project became very controversial, and multiple legal challenges to the environmental review process seriously delayed implementation of the project. In 1995, a citizen’s group in San Mateo County developed a new project alternative in an effort to resolve the controversy and allow for construction of a solution to the landslide problem. This alternative called for construction of a tunnel slightly to the east of Devil’s Slide. The tunnel alternative was presented to the voters of San Mateo County in 1996 as an amendment to the approved Local Coastal Program (“LCP”) for the county that would provide for construction of the tunnel alternative. The voters indicated support for the tunnel alternative by approving the LCP amendment.

The Department had previously considered and rejected a similar alternative due to the extremely high cost associated with such a structural solution. Due to the public interest in the alternative, the Department revisited the alternative and initiated new environmental review of the alternative. The Department also investigated the possibility of additional federal funding to cover the additional costs associated with such an alternative.

In 2002, the Department concluded its environmental review and, due in part to federal assurances of additional funding, approved the tunnel alternative. The Department has completed final design and anticipates commencement of construction in late 2004.

Upon the chaptering of the legislation discussed below, the Department will initiate the process to have some portions of the Martini Creek property declared surplus property. However, the Department believes that there may be future transportation use of certain portions of the Martini Creek property with respect to the development of mitigation sites required for other transportation projects in San Mateo County. The Department recognizes that statutes governing disposition of surplus property give preference to transfer of such property to other public entities for park purposes. The Department also recognizes that a likely recipient of this surplus property is DPR, as the transfer of this surplus property would benefit DPR as it would enable DPR to unify the currently bisected Montara State Beach.

CCC is interested in supporting such a transfer as the majority of Montara State Beach is located in the Coastal Zone, and such a transfer will improve public access and protect scenic and environmentally sensitive resources within Montara State Beach.

General Understanding

Given this background, the Department, DPR and CCC will pursue the following tasks to implement the transfer of certain potential surplus Martini Creek property from the Department to DPR:

1. CCC and DPR, in consultation with the Department, have assisted in the preparation of draft legislation authorizing the sale of those portions of the Martini Creek property that are within the Coastal Zone and adjacent to Montara State Beach, depicted on the attached Exhibit 1 as Area A, from the Department to DPR pursuant to the provisions of Section 9 of Article XIX of the California Constitution. Such legislation will allow the Department to transfer the Area A property to DPR in exchange for payment by DPR of the Department's original acquisition cost. The Legislative Affairs divisions of CCC and DPR will work to find an author for this proposed legislation. In the event this proposed legislation is not enacted in the current legislative session and it becomes necessary to submit the proposed legislation (Exhibit 2) in the following legislative session, the Department will not initiate the excess property disposition process as to any of the Martini Creek property subject to this agreement until the end of the 2005-2006 legislative session at the earliest.
2. While DPR will commit to the acquisition of Area A, DPR will not commit to any other acquisition at this time, except as with respect to Area B as noted below. The acquisition of Area C will be dependent of the appraised Fair Market Value (FMV) of Area C.
3. Area B depicted on Exhibit 1 is a small, approximately 10-acre area that is actually part of Area A (which consists of State Parcel Numbers 39872, 39873, and 39874). If Area B were severed from Area A, Area B would likely become an uneconomic remnant for several reasons. First, it would lack improved access to any public road as well as access to necessary infrastructure. It contains difficult topography. Given high development costs, its inherent value as a separate parcel is likely to be low. Current open space acquisitions have ranged from \$9,000 - \$15,000 per acre, and these values provide a good measure of FMV for Area B as its likely use would be as open space given the development costs. Given the size and location of Area B, it would likely be at the lower end of this range of value. The

original acquisition cost for Area B was approximately \$4,000 per acre. Accordingly, Area B may have a value that is approximately \$5,000 per acre greater than its original acquisition cost (for an approximate total of \$50,000 above the original acquisition cost). The Department will be required to expend significant resources to survey the approximate Coastal Zone boundary if DPR is unable to take Area B as part of its acquisition. The cost of such survey will be in the range of \$20,000-\$30,000. Assuming a mid-range of \$25,000 for survey costs, this would give Area B an indicated FMV of \$25,000 above its original acquisition cost.

4. The Department will be reserving the right to access the transferred property for development of future mitigation sites. Normally, the Department would have to pay to secure an option for use of such sites at an agreed-upon value. In this instance, DPR will provide the Department with an ongoing right of access for such mitigation development with the cost for such use of land held at the Department's original acquisition cost. The Department will transfer, by credit to the "Land Bank", a sum equal to its original acquisition cost, on a pro rata basis, for any property actually used for such work. The value of securing the availability of such potential future sites is arguably greater than the indicated FMV of \$25,000 above the original acquisition cost for Area B. Accordingly, the Department believes it prudent to transfer both Area A and Area B at their original acquisition cost. On this basis, DPR will commit to including Area B in its acquisition.

5. Upon chaptering of this legislation, and after issuance of a determination by the Department that the Martini Creek property is surplus, the Department and DPR will utilize an existing "Land Bank" agreement between the Department and DPR to effect the transfer of surplus Martini Creek property from the Department to DPR. The transfer will include all Area A and Area B property. DPR will pay the Department, through credits in the process defined in the "Land Bank" Agreement, the Department's original acquisition cost for Area A and Area B, or \$823,268. The Department and DPR will affect the transfer by executing an Agreement for Transfer of Jurisdiction of State-Owned Real Property, substantially in the form depicted on the attached Exhibit 2.

6. In the event the Department is unable to construct, for any reason, the currently planned tunnel alternative discussed above, then DPR will transfer all acquired Martini Creek Property back to the Department and the Department will credit back all amounts debited against DPR for the original transfer of the Martini Creek Property from the Department to DPR. The Department, DPR and CCC will consult in an effort to develop mutually agreeable next steps in the event of such an occurrence.

7. At the same time, the Department and DPR commit to entering a process to appraise and analyze the properties in Area C, depicted on the attached Exhibit 1, for potential transfer to DPR through the "Land Bank" agreement and a separate Agreement for Transfer of Jurisdiction of State-Owned Real Property. Should the FMV of Area C exceed an amount that DPR is willing to expend, DPR reserves the right to decline acceptance of title to Area C.

8. The Department will reserve rights in the transferred property that will allow the Department to access and construct future environmental mitigation projects on the transferred property, and such activity is jointly planned by the Department and DPR pursuant to the provisions of section 4(f) of the Federal Department of Transportation Act. The purpose of such joint planning is to provide the basis of a determination by the Federal Highway Administration that the construction of the environmental mitigation projects does not constitute a use pursuant to the provisions of section 4(f) of the Federal Department of Transportation Act.

9. It is understood by CCC and DPR that all transfers of property are subject to review and approval by the California Transportation Commission and the Department of General Services.

10. In the event that the legislation referenced in Section 2 is not chaptered, the Agreement(s) for Transfer of Control and Possession of State-Owned Real Property referenced in Section 6 is not executed,

or any portion of this transfer of property is not approved by the California Transportation Commission or the Department of General Services (as referenced in Section 10), then the Department, CCC, and DPR will enter into a new agreement to provide an alternative means to facilitate the mutually-agreeable transfer the Area A and Area B properties from Department to DPR or to explore other alternative options for the protection of scenic, environmentally sensitive, and public access resources within the Martini Creek property.

State of California
Department of Transportation

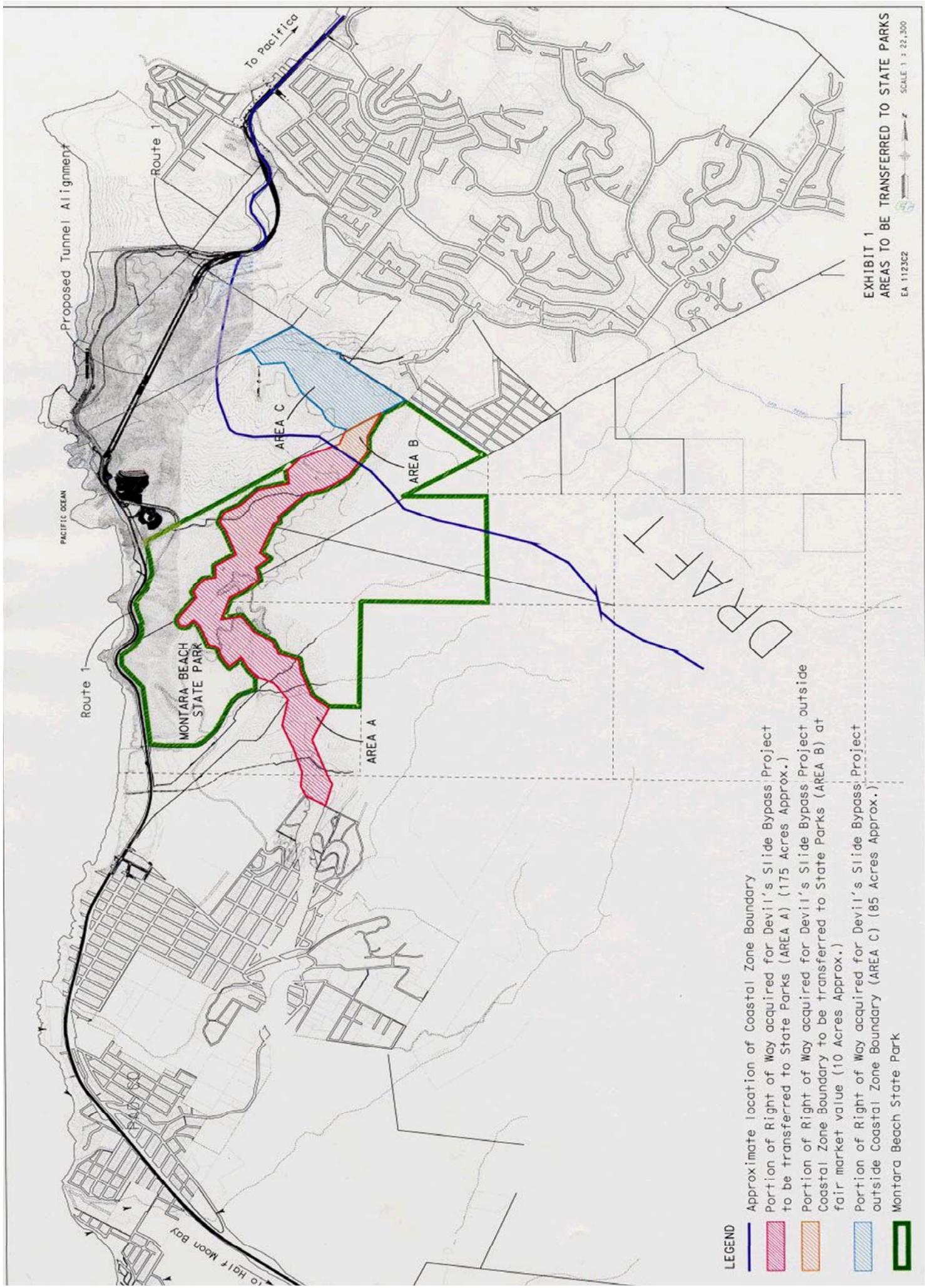
By _____ Dated: _____
Bijan Sartipi
District 4 Director

State of California
Department of Parks and Recreation

By _____ Dated: _____
Ruth G. Coleman
Director

State of California
California Coastal Commission

By _____ Dated: _____
Peter M. Douglas
Executive Director



LEGEND

-  Approximate location of Coastal Zone Boundary
-  Portion of Right of Way acquired for Devil's Slide Bypass Project to be transferred to State Parks (AREA A) (175 Acres Approx.)
-  Portion of Right of Way acquired for Devil's Slide Bypass Project outside Coastal Zone Boundary to be transferred to State Parks (AREA B) at fair market value (10 Acres Approx.)
-  Portion of Right of Way acquired for Devil's Slide Bypass Project outside Coastal Zone Boundary (AREA C) (85 Acres Approx.)
-  Montara Beach State Park

EXHIBIT 1
AREAS TO BE TRANSFERRED TO STATE PARKS
 EA 112362  SCALE 1 : 22,300

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

AGREEMENT FOR TRANSFER OF JURISDICTION OF STATE-OWNED REAL PROPERTY

E.A. 1123C2

DRAFT

This Agreement entered into this _____ day of _____ by and between the California Department of Transportation, hereinafter called Transferor and the California Department of Parks and Recreation hereinafter called Transferee, with the approval of the Director of the California Department of General Services.

WITNESSETH:

WHEREAS, Transferor has jurisdiction of the hereinafter described real property, and

WHEREAS, Transferee desires to acquire jurisdiction of said real property and Transferor is willing to transfer said jurisdiction;

NOW, THEREFORE, pursuant to the provisions of Section 14673 of the Government Code of the State of California, Transferor hereby transfers unto Transferee and Transferee accepts the jurisdiction of the real property situated in the County of San Mateo, State of California, described as follows:

See attached Exhibit "1" depicting the parcels (Areas A and B) subject to this agreement.

Reserving unto Transferor the perpetual right of access for the purposes of constructing environmental mitigation including, but not limited to, endangered species habitat, wetland and riparian habitat, tree planting, erosion and sediment control, visual enhancements and public access improvements. The cost to Transferor for the areas so used shall be a sum equal to Transferor's original acquisition cost, on a pro rata basis, and shall appear as a credit by Transferor in favor of Transferee in the Land Bank Agreement between Transferor and Transferee.

IN CONSIDERATION for said transfer, Transferee agrees to pay Transferor the sum of \$823,268 for Areas A and B in accordance with the provisions of the Land Bank Agreement between Transferor and Transferee.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the date first above written.

**State of California
Department of Transportation**

State of California
Department of Parks and Recreation

By _____

By _____

APPROVED:

Dr. Mark Schrader, Deputy Director
Acquisition & Development

Department of General Services

By _____

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**THIS INFORMATION IS TO BE SHOWN ON DEPARTMENT OF TRANSPORTATION ARCHIVE COPY
ONLY.**

APPROVAL RECOMMENDED

District Division Chief-Right of Way

DIVISION OF RIGHT OF WAY

By _____
Right of Way Agent

APPROVED AS TO FORM AND PROCEDURE:

By _____
Attorney

EXHIBIT 2

Bill No. _____

The people of the State of California do enact as follows:

SEC. 1. (a) The Legislature finds and declares all of the following:

(1) The existing Martini Creek Devil's Slide bypass right-of-way for the realignment of Route 1, from the northern boundary of the town of Montara to past the alignment summit over Montara Mountain, bisects the McNee Ranch Acquisition area of Montara State Beach, is an environmentally sensitive Coastal Mountain Habitat area of undeveloped land within a scenic corridor viewed from the coast and Route 1, and is popular for a variety of recreational pursuits, including hiking and biking.

(2) An overwhelming majority of San Mateo County voters passed Measure T in 1996, proclaiming that the construction of a surface bypass in this area would seriously damage the watersheds, wildlife habitats and parks of Montara and San Pedro Mountains, and directing the amendment of their Local Coastal Program to provide for a tunnel alternative to such a bypass.

(3) With the Department of Transportation's determination that a freeway bypass over Montara Mountain is not currently viable, the property located in the existing Martini Creek Devil's Slide bypass right-of-way for the realignment of Route 1 from the northern boundary of the town of Montara (State Parcel Number 39874) to past the alignment summit over Montara Mountain (State Parcel Numbers 39873 and a large portion of 39872), hereinafter "the Martini Creek Bypass Alignment", is surplus state property located within the coastal zone, as defined in Section 30103 of the Public Resources Code, as that zone was described on January 1, 1977, and subject to Section 9 of Article XIX of the California Constitution. It is, therefore, fitting and proper, and in furtherance of the public interest, that the Department of Transportation sell its ownership interest in the Martini Creek Bypass Alignment for the purpose of adding to the McNee Ranch Acquisition area of Montara State Beach.

(b) It is the intent of the Legislature that:

(1) The sale of the property in the Martini Creek Bypass Alignment by the Department of Transportation for conversion to state park purposes will not adversely impact any mitigation credits that may be additionally factored into the sale price and that the Department of Transportation may be entitled to by making this property transfer.

(2) The Department of Parks and Recreation shall include this area in the management of the McNee Ranch Acquisition area of Montara State Beach for park purposes that are consistent with the San Mateo County Local Coastal Program.

(c) The Department of Transportation shall declare that the Martini Creek Bypass Alignment right-of-way is surplus state property and provide for the sale and transfer of this property to the Department of Parks and Recreation for State park purposes as provided under Section 9 of Article XIX of the California Constitution.