

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
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SANTA CRUZ, CA 95060
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W6a



Prepared May 21, 2009 (for June 10, 2009 Hearing)

To: Coastal Commissioners and Interested Persons

From: Dan Carl, District Manager
Jonathan Bishop, Coastal Planner

Subject: **Appeal A-3-SLO-08-018 (ODSVRA Restrooms)** Appeal by Nell Langford, Christie Camphorst, and Kelly Devaney of San Luis Obispo County decision granting permit with conditions to the California Department of Parks and Recreation to replace one existing restroom and install five new restrooms within the Oceano Dunes State Vehicular Recreation Area in the Oceano area of San Luis Obispo County. Appeal Filed: April 1, 2008. 49th Day: Waived.

Recommendation

Staff recommends that the Commission determine that **no substantial issue** exists with respect to the grounds on which appeal A-3-SLO-08-018 was filed. Staff recommends a **YES** vote on the following motion and resolution:

Motion and Resolution. I move that the Commission determine and resolve that Appeal Number A-3-SLO-08-018 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Coastal Act Section 30603 regarding consistency with the certified Local Coastal Program and/or the public access policies of the Coastal Act.

Passage of this motion and resolution will result in a finding of no substantial issue and adoption of the following findings. By such action, the Coastal Commission declines to take jurisdiction over the coastal development permit (CDP) for this project, the County's action becomes final and effective, and any terms and conditions of the County's decision remain unchanged. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present

Findings

The Appellants raise various concerns with the County approval, including general claims about problems with on-going vehicle use of State Parks' (DPR's) Oceano Dunes State Vehicular Recreation Area (ODSRVA) and water quality impacts related to the proposed restrooms (see Exhibit 2 for complete text of the appeal contentions).

The LCP recognizes and provides for off-highway vehicle use at ODSVRA (see Standards 4 through 13, Exhibit 3). Similarly, the Commission, through various permit actions, has recognized the consistency of such use with the public access and recreation policies of the Coastal Act, as well as other resource protection policies of the Act, contingent on on-going resource management conditions, including maximum limits on vehicle use at the Park (see, for example, CDP 4-82-300-A5). In addition, the proposed CDP is for construction of new restrooms and does not affect any ongoing permits or other



authorizations allowing for the use of ODSVRA for off-highway vehicles. The issue of the consistency of that use with the LCP is therefore not before the Commission at this time.

With respect to water quality concerns, the restrooms are intended to avoid water quality and related dune impacts by providing appropriate restroom facilities for park users who might otherwise inappropriately use the dunes themselves for such activities. The proposed restrooms will thus provide a beneficial service to the recreational users of the park and increased protection to the surrounding dune environment. In addition, the footprint of the restrooms is small (approximately 115 square feet each), and they are being placed immediately adjacent to existing restrooms, thus minimizing dune impacts. Further, the County found that there would not be adverse impacts to ocean waters, including because all sewage will be contained within the restroom vaults and periodically pumped out and transported to an approved disposal location.

The Appellants also raise issues regarding the appropriate use of the Le Grande Tract, a dune area which is owned by San Luis Obispo County but leased for park use by DPR. As indicated above, the issue of the consistency of such use is not before the Commission at this time. Also, County condition 11 requires that DPR receive authorization from the County to use the property for the restroom project prior to construction. Thus, any questions concerning the proper authority of DPR to implement the project relative to the Le Grande Tract will be resolved prior to construction.

Finally, and in terms of the larger issues of vehicle use at ODSVRA, as explained above, while the restrooms support the on-going recreational vehicle use of the park, the restroom project itself does not directly raise the larger on-going management issues. DPR has been addressing these issues under its management authorities, through the coastal permitting requirements of the Commission, and in response to other agencies, such as the Department of Fish and Game and the U.S. Fish and Wildlife Service. The county-issued CDP does not address these issues, and thus they are not part of the current appeal. Rather, and as the Commission has indicated in the past, these larger resource management issues are best addressed when the Commission analyzes the proposed Habitat Conservation Plan (HCP) and any potential related coastal permit and/or LCP amendments for the site. DPR indicates that they are working on their ODSVRA HCP, but it is currently unclear when the public review draft will be out and available for comments.

In sum, the County has provided adequate factual and legal support for its action. In light of the above, the Commission finds that the appeals do not raise a substantial issue.

Exhibits:

Exhibit 1: San Luis Obispo County CDP decision

Exhibit 2: Appeals of San Luis Obispo County's CDP decision

Exhibit 3: Relevant San Luis Obispo County LCP policies





SAN LUIS OBISPO COUNTY
DEPARTMENT OF PLANNING AND BUILDING

March 10, 2008

California Department of Parks and Recreation
Oceano Dunes, SVRA
340 James Way, Suite 270
Pismo Beach, California 93449

VICTOR HOLANDA, AICP
DIRECTOR

**FINAL LOCAL
ACTION NOTICE**

REFERENCE # 3-SLO-08-077

APPEAL PERIOD 3/18 - 4/1/2008

CORRECTED NOTICE OF FINAL COUNTY ACTION

RECEIVED

MAR 17 2008

HEARING DATE: January 15, 2008

SUBJECT: County File No. – DRC 2006-00180
Minor Use Permit/Coastal Development Permit

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

LOCATED WITHIN COASTAL ZONE: YES

The above-referenced application was approved by the Board of Supervisors, based on the approved Findings and Conditions, which are attached for your records. This Notice of Final Action is being mailed to you pursuant to Section 23.02.033(d) of the Land Use Ordinance.

This action is appealable to the California Coastal Commission pursuant to regulations contained in Coastal Act Section 30603 and the County Coastal Zone Land Use Ordinance 23.01.043. These regulations contain specific time limits to appeal, criteria, and procedures that must be followed to appeal this action. The regulations provide the California Coastal Commission ten (10) working days following the expiration of the County appeal period to appeal the decision. This means that no construction permits can be issued until both the County appeal period and the additional Coastal Commission appeal period have expired without an appeal being filed.

Exhaustion of appeals at the county level is required prior to appealing the matter to the California Coastal Commission. This second appeal must be made directly to the California Coastal Commission Office. Contact the Commission's Santa Cruz Office at (831) 427-4863 for further information on their appeal procedures.

If the use authorized by this Permit approval has not been established, or if substantial work on the property towards the establishment of the use is not in progress after a period of twenty-four (24) months from the date of this approval or such other time period as may be designated through conditions of approval of this Permit, this approval shall expire and become void unless an extension of time has been granted pursuant to the provisions of Section 23.02.050 of the Land Use Ordinance.

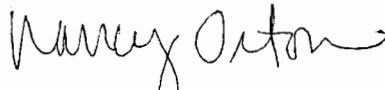
CCC Exhibit 1
(page 1 of 12 pages)

California Department of Parks and Recreation
March 10, 2008
Page Two

If the use authorized by this Permit approval, once established, is or has been unused, abandoned, discontinued, or has ceased for a period of six (6) months, or conditions have not been complied with, such Permit approval shall become void.

If you have questions regarding your project, please contact me at (805) 788-2008.

Sincerely,


for MARSHA LEE
Coastal Planning and Permitting

cc: California Coastal Commission,
725 Front Street, Suite 300, Santa Cruz, California 95060
Dr. Nell Langford, 871 Stratford Street, Pismo Beach, California 93449
Ms. Kelly Devaney, 336 Juanita Avenue, Oceano, California 93445
Ms. Christie Camphorst, 336 Juanita Avenue, Oceano, California 93445
Mr. Joey Rancano, Post Office Box 1260, Morro Bay, California 93443-1260

(Planning Department Use Only – for California Coastal Commission)

Date NOFA copy mailed to Coastal Commission: March 10, 2008

Enclosed: Staff Report
 Resolution with Findings and Conditions

IN THE BOARD OF SUPERVISORS
COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

Tues day January 15, 2008

PRESENT: Supervisors Harry L. Ovitt, Bruce S. Gibson, Jerry Lenthall,
Chairperson James R. Patterson

ABSENT: Supervisor K.H. 'Katcho' Achadjian

RESOLUTION NO. 2008-32

RESOLUTION AFFIRMING THE DECISION OF HEARING OFFICER AND
CONDITIONALLY APPROVING THE APPLICATION OF THE STATE OF
CALIFORNIA DEPARTMENT OF PARKS AND RECREATION FOR MINOR USE
PERMIT/COASTAL DEVELOPMENT PERMIT DRC2006-00180

The following resolution is hereby offered and read:

WHEREAS, on September 7, 2007, the Zoning Administrator of the County of San Luis Obispo (hereinafter referred to as the "Hearing Officer") duly considered and conditionally approved the application of the State of California Department of Parks and Recreation for Minor Use Permit/Coastal Development Permit DRC2006-00180; and

WHEREAS, Nell Langford, Joey Rancano, Kelly Devaney, and Christie Camphorst have filed separate appeals and have appealed the Hearing Officer's decision to the Board of Supervisors of the County of San Luis Obispo (hereinafter referred to as the "Board of Supervisors") pursuant to the applicable provisions of Title 23 of the San Luis Obispo County Code; and

WHEREAS, a public hearing was duly noticed and conducted by the Board of Supervisors on January 15, 2008, and determination and decision was made on January 15, 2008; and

WHEREAS, at said hearing, the Board of Supervisors heard and received all oral and written protests, objections, and evidence, which were made, presented, or filed, and all persons present were given the opportunity to hear and be heard in respect to any matter relating to said appeals; and

WHEREAS, the Board of Supervisors has duly considered the appeals and determined that the appeals should be denied and the decision of the Hearing Officer should be affirmed subject to the findings and conditions set forth below.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the Board of Supervisors of the County of San Luis Obispo, State of California, as follows:

1. That the recitals set forth herein above are true, correct and valid.
2. That the Board of Supervisors makes all of the findings of fact and determinations set forth in Exhibit A attached hereto and incorporated by reference herein as though set forth in full.
3. That this project is found to be categorically exempt from the provisions of the California Environmental Quality Act under the provisions of California Code of Regulations, title 14, section 15303 (class 3) and section 15311 (class 11).
4. That the appeals filed by Nell Langford, Joey Rancano, Kelly Devaney, and Christie Camphorst are hereby denied and the decision of the Hearing Officer is affirmed and that the application of the State of California Department of Parks and Recreation for Minor Use Permit/Coastal Development Permit DRC2006-00180 is hereby approved subject to the conditions of approval set forth in Exhibit B attached hereto and incorporated by reference herein as though set forth in full.

Upon motion of Supervisor Gibson, seconded by Supervisor Lenthall, and on the following roll call vote, to wit:

AYES: Supervisors Gibson, Lenthall, Ovitt, Chairperson Patterson

NOES: None

ABSENT: Supervisor Achadjian

ABSTAINING: None

the foregoing resolution is hereby adopted.

JAMES R. PATTERSON
Chairman of the Board of Supervisors

ATTEST:

JULIE L. RODEWALD
Clerk of the Board of Supervisors

By: C.M. CHRISTENSEN Deputy Clerk
(SEAL)

APPROVED AS TO FORM AND LEGAL EFFECT:

JAMES B. LINDHOLM, JR.
County Counsel

By: James B. Lindholm, Jr.
Deputy County Counsel

Dated: November 13, 2007

STATE OF CALIFORNIA,)
) ss.
County of San Luis Obispo,)

I, JULIE L. RODEWALD, County Clerk and ex-officio Clerk of the Board of Supervisors, in and for the County of San Luis Obispo, State of California, do hereby certify the foregoing to be a full, true and correct copy of an order made by the Board of Supervisors, as the same appears spread upon their minute book.

WITNESS my hand and the seal of said Board of Supervisors, affixed this 8th day of February, 2008.

(SEAL) JULIE L. RODEWALD
County Clerk and Ex-Officio Clerk of the Board of Supervisors
By: C.M. Christensen Deputy Clerk.

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BOARD OF SUPERVISORS
COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

Tuesday, January 15, 2008

PRESENT: Supervisors Harry L. Ovitt, Bruce S. Gibson, Jerry Lenthall, K.H. 'Katcho' Achadjian, and Chairperson James R. Patterson

ABSENT: None

In the matter of an appeal by N. Langford, K. DeVaney, C. Camphorst & J. Racano re: Oceano Dunes Restrooms:

This is the time set for hearing to consider an appeal by Dr. Nell Langford, Kelly DeVaney, Christie Camphorst, and Joey Racano of the Planning Department Hearing Officer's approval of a request by the State of California Department of Parks and Recreation for a Minor Use Permit/Coastal Development Permit to replace one existing restroom and install five new restroom buildings adjacent to existing restroom facilities within the Oceano Dunes State Vehicular Recreation Area located south of Arroyo Grande within the Recreation land use category; 4th District.

(SUPERVISOR K.H. 'KATCHO' ACHADJIAN DISQUALIFIES HIMSELF DUE TO A CONFLICT OF INTEREST.)

Ms. Marsha Lee: Planning, presents the staff report; **(SUPERVISOR JERRY LENTHALL IS NOW ABSENT.);** highlights the appeal issues; **(SUPERVISOR JERRY LENTHALL IS NOW PRESENT.);** presents the location of the existing and proposed restrooms under this permit; amends the staff report on Page C-3-8, Item J by removing ", trees," from the sentence.

Mr. Jim Orton: Deputy County Counsel, clarifies for the record that there are four Appellants in this case.

Dr. Nell Langford: Appellant, addresses her appeal and discusses California Public Resources Codes 5019.71, 5001.95, and 5090.43; urges the Board to uphold the appeal.

Ms. Kelly Devaney: Appellant, states vault toilets should not be allowed on the beach; outlines why she believes these restrooms are illegal; addresses concerns with the location of the restrooms; states these restrooms are not consistent with the General Plan and challenges the suggestion that they are accessory units.

Mr. Joey Racano: Appellant representing the California Ocean Outfall Group, speaks to their concerns with the construction of these restrooms; discusses the number of accidents within the Recreation Area; states his appeal is based on the right for due process; discusses County Code Section 15.44.120; urges the Board to give the public their right to due process in this matter.

Mr. Andrew Zilke: State Parks representative, discusses the placement of the restrooms; addresses the concerns of the Appellant's; discusses the benefits of these structures and their minimal impact to the beach; urges the Board to deny the appeal.

Supervisor Lenthall: asks Mr. Zilke to further discuss the benefits of these structures regarding Health and Public Safety.

Mr. Ron Glick: State Environmental Scientist, amends the number of restrooms at Site D and Site G.

Mr. Kevin Rice: addresses the need for restrooms at Oceano Dunes; reads a letter published in the September 19, 2007 issue of the *New Times* by Ms. Linda Raulerson, addressing the lack for restrooms at the Dunes; urges the Board to deny the appeal.

Mr. Eric Greening: echoes the comments of the Appellants; questions Issue #4 and how a construction project going through Arroyo Grande Creek will impact the creek and habitat; if private land within the La Grande Tract have been surveyed to ensure private property is not being taken; urges the Board to uphold the appeal.

Ms. Marsha Lilly: questions why more toilets are needed in this area; addresses her concerns with the State expanding the Recreational Area; discusses a study done in 1975, where they recommended the number of camp sites be reduced and additional restrictions to vehicle access occurs; urges the Board to deny this application.

Ms. Geri Bedell: presents photographs of the Dunes; addresses her concerns regarding chemical outhouses and the impacts from the transportation of fecal matter.

Mr. Lee Bedell: comments on the importance and inspiration of the Dunes.

Ms. Patricia Okerblom: addresses her concerns with the CEQA exemption for this project; states this project violates the Coastal Act.

Mr. Larry Bross: states this is an issue of mismanagement; speaks to the misinformation on the permit application; questions why this Permit request did not go before the Planning Commission.

Ms. Ann Steele: presents a video addressing her concerns with the "sewage carts or honey wagons"; states this is a potential disaster waiting to happen.

Ms. Sandra Brazil: Ocean Outfall Group, speaks to the project being within a clam preserve.

Ms. Verona Rebow: discusses the importance of the Dunes and presents photographs; comments on the vehicular accidents at the Dunes.

Ms. Marla Jo Bruton: presents a video regarding the proposed restrooms within the Beach area.

Mr. Richard Sadowski: presents a video regarding the location of Sand City.

Ms. Hanida Kidsi: urges the Board to uphold the appeal.

Mr. Zilke and Mr. Glick: respond to public comment.

Board Members: question the difference in servicing existing and new structures and where else these structures are being used, with Mr. Zilke responding.

Mr. Racano: urges the Board to uphold the appeal; discusses County Code Section 15.44.120 regarding protecting the clam habitat; speaks to the destruction of the Snowy Plover habitat.

Dr. Langford: questions why the Board doesn't look at County Code regarding driving in front of the La Grande Tract; discusses the letter from Mr. Lilly, in the Board's packet, regarding the vault restrooms.

Mr. Matt Janssen: Planning, states several issues raised today are not a part of the appeal.

Supervisor Gibson: questions the categorical exemption from CEQA; the impacts of crossing Arroyo Grande Creek during construction; if creek crossing mitigations could be added as a condition of the permit; how Title 15 is applicable to this area; with Mr. Janssen and Mr. Orton responding.

Mr. Janssen: discusses the limitations of County Codes on State property.

Board Members: address various comments and concerns with Title 15; the placement and access to the restrooms; and, how the existing structures were approved, with Mr. Janssen responding.

Mr. Zilke: speaks to State law superseding local law; states the area being addressed is State owned property.

A motion by Supervisor Bruce S. Gibson, seconded by Supervisor Jerry Lenthall, to tentatively deny the appeal and approve the resolution affirming the decision of the Planning Department Hearing Officer and approve the application by the California Department of Parks and Recreation for a Minor Use Permit/Coastal Development Permit DRC2006-0180 with the addition of two conditions to Page C-3-15 as follows: 10) that if the Arroyo Grande Creek is flowing that prior to any construction activities crossing the creek a qualified biological professional will verify that threatened listed species would not be harmed by the crossing of construction equipment; and 11) prior to initiation of the project that the applicant will provide evidence of legal access to the project sites to the satisfaction of County Counsel consistent with all applicable County Codes, and staff is directed to draft the appropriate language for the added changes, is discussed.

Mr. Warren Jensen: Deputy County Counsel, states evidence has been provided to County Counsel that the property was transferred to the State in 1937 and the ordinance in question appears to be predated to that transaction and did become obsolete and he will continue to research the matter.

Mr. Janssen: presents language to amend the conditions as directed by the Board, with the motion maker and second agreeing with the presented changes.

Thereafter, on motion of Supervisor Bruce S. Gibson, seconded by Supervisor Jerry Lenthall, and on the following roll call vote:

AYES: Supervisors: Bruce S. Gibson, Jerry Lenthall, Harry L. Ovitt, Chairperson James R. Patterson
NOES: None
ABSENT: Supervisor: K.H. 'Katcho' Achadjian

the Board denies the appeal and adds the following conditions to Page C-3-15: 10) prior to initiation of the project a qualified biologist shall perform a precrossing survey to verify no listed or endangered species will be impacted as a result of construction equipment crossing the Arroyo Grande Creek; 11) prior to initiation of the project the Applicant shall provide evidence of legal access to the project sites to the satisfaction of County Counsel in accordance with the County Code and State laws; and RESOLUTION NO. 2008-32, resolution affirming the decision of Hearing Officer and conditionally approving the application of the State of California Department of Parks and Recreation for Minor Use Permit/Coastal Development Permit DRC2006-00180, adopted as amended.

(SUPERVISOR HARRY L. OVITT IS NOW ABSENT AND SUPERVISOR K.H. 'KATCHO' ACHADJIAN IS NOW PRESENT.)

STATE OF CALIFORNIA)
)
County of San Luis Obispo) ss.

cc: Planning (2); 2/7/08

I, **JULIE L. RODEWALD**, County Clerk and Ex-Officio Clerk of the Board of Supervisors, in and for the County of San Luis Obispo, State of California, do hereby certify the foregoing to be a full, true and correct copy of an order made by the Board of Supervisors, as the same appears spread upon their minute book.

WITNESS my hand and the seal of the said Board of Supervisors, affixed this 6th day of February, 2008.

(SEAL) **JULIE L. RODEWALD**
County Clerk and Ex-Officio Clerk of the Board of Supervisors

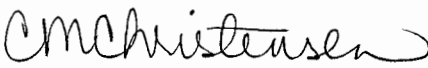
By 
Deputy Clerk

EXHIBIT A - FINDINGS

CEQA Exemption

- A. The project qualifies for a Class 3 and 11 Categorical Exemption pursuant to CEQA guidelines section 15303 and 15311, issued by California Department of Parks and Recreation on February 28, 2006, because the project consists of the construction and location of six new, small facilities or structures, included as "construction or installation of restrooms" and "construction or installation of additional public use facilities"

Minor Use Permit

- B. The proposed project or use is consistent with the San Luis Obispo County General Plan because the use is an allowed use and as conditioned is consistent with all of the General Plan policies.
- C. As conditioned, the proposed project or use satisfies all applicable provisions of Title 23 of the County Code.
- D. The establishment and subsequent operation or conduct of the use will not, because of the circumstances and conditions applied in the particular case, be detrimental to the health, safety or welfare of the general public or persons residing or working in the neighborhood of the use, or be detrimental or injurious to property or improvements in the vicinity of the use because the project does not generate activity that presents a potential threat to the surrounding property and buildings. This project is subject to Ordinance and Building Code requirements designed to address health, safety and welfare concerns.
- E. The proposed project or use will not be inconsistent with the character of the immediate neighborhood or contrary to its orderly development because the project is similar to, and will not conflict with, the surrounding lands and uses.
- F. The applicant has demonstrated that adequate public service capacities are available to serve the proposed project. The project provides additional vault restrooms for recreation users.

Coastal Access

- G. The proposed use is in conformity with the public access and recreation policies of Chapter 3 of the California Coastal Act, because the project will not inhibit access to the coastal waters and recreation areas. There is established coastal access that exists near the site, and public access will continue.

Sensitive Resource Area Findings

- H. The development will not create significant adverse effects on the natural features of the site or vicinity that were the basis for the Sensitive Resource Area designation, and will preserve and protect such features through the site design, because the proposed project is consistent with protection of the dune habitat because the vault restrooms are located outside of the vegetated areas, adjacent to the existing restrooms, and construction is limited to October and November to avoid any potential impacts on species. The vault toilets contain an enclosed sewage tank that requires pumping

approximately twice per year, depending on use. One-ton trucks with pumping equipment are utilized. Each vault toilet has maintenance access hatches that prevent spillage. The vaults are pumped out and transported to the sewage dump station within the park off of La Sage Drive, where the sewage is pumped into the city sewer system.

- I. Natural features and topography have been considered in the design and siting of all proposed physical improvements because the proposed project is consistent with protection of the dune habitat because the vault restrooms contain enclosed sewage storage tanks which are periodically vacuum pumped and trucked to the sewage station within the park off La Sage Drive where the sewage is then pumped into the city sewer system. The vault restrooms are located outside of the vegetated areas, adjacent to the existing restrooms, and construction is limited to October and November to avoid any potential impacts on species.
- J. The proposed clearing of topsoil, trees, is the minimum necessary and will not create significant adverse effects on the identified sensitive resource, because there is no removal of native vegetation, and the project construction is limited to October and November.
- K. The soil and subsoil conditions are suitable for any proposed excavation and site preparation and drainage improvements have been designed to prevent soil erosion, and sedimentation of streams through undue surface runoff. They are constructed of marine-grade, reinforced concrete and will match the style of the existing restroom facilities. The restrooms are generally low-odor compared to portable toilets. The buildings have below-ground vault style storage for reduced pumping (emptying) needs.

Sites will be excavated to a depth sufficient to place the underground vaults, approximately 5 feet deep by 30-40 feet wide. The vault will be set on native sand material. Excavated material will be stockpiled to use for backfill. Backfilling the excavation will occur with the native sand material. Excess sand will be placed on-site, being spread out in the immediate area to make the site level. Construction is conditioned to occur outside of the nesting season, i.e. October through November.

EXHIBIT B CONDITIONS OF APPROVAL

Approved Development

1. This approval authorizes:
 - a. Replace one existing restroom and install five new restroom buildings. Restrooms will be placed adjacent to existing restroom facilities within the Oceano Dunes State Vehicular Recreation area.
 - b. The project will result in the disturbance of approximately 9600 square feet
 - c. Grading cut and fill will be balanced on site equaling approximately 6000 cubic yards

Conditions required to be completed at the time of application for construction permits

2. Applicant shall apply for a building permit and a grading permit, as required.

Conditions to be completed prior to issuance of a construction permit

Grading, Drainage, Sedimentation and Erosion Control

3. **Prior to issuance of construction permits**, the applicant shall submit a drainage plan, sedimentation and erosion control plan for review and approval by the County Public Works Department.
4. **Prior to issuance of a construction permit**, the applicant shall pay all applicable school and public facilities fees.

Conditions to be completed during project construction

Archaeology

5. In the event archaeological resources are unearthed or discovered during any construction activities, the following standards apply:
 - a. Construction activities shall cease and the Environmental Coordinator and Planning Department shall be notified so that the extent and location of discovered materials may be recorded by a qualified archaeologist, and disposition of artifacts may be accomplished in accordance with state and federal law.
 - b. In the event archaeological resources are found to include human remains, or in any other case where human remains are discovered during construction, the County Coroner is to be notified in addition to the Planning Department and Environmental Coordinator so that proper disposition may be accomplished.

Grading, Drainage, Sedimentation and Erosion Control

6. Grading is to occur between October 1 to November 30, a sedimentation and erosion control plan shall be submitted pursuant to Coastal Zone Land Use Ordinance Section 23.05.036.

Conditions to be completed prior to final inspection/establishment of the use.

7. **Prior to occupancy of any structure associated with this approval**, the applicant shall contact the Department of Planning and Building to have the site inspected for compliance with the conditions of this approval.
8. This permit is valid for a period of 24 months from its effective date unless time extensions are granted pursuant to Land Use Ordinance Section 23.02.050. This permit is generally considered to be vested once a building permit has been issued and substantial site work has

been completed. Substantial site work is defined (Section 23.02.042) as site work progressed beyond grading and completion of structural foundations; and construction is occurring above grade ('sticks in the air').

9. All conditions of this approval shall be strictly adhered to, within the time frames specified, and in an on-going manner for the life of the project. Failure to comply with these conditions of approval may result in an immediate enforcement action by the Department of Planning and Building. If it is determined that violation(s) of these conditions of approval have occurred, or are occurring, this approval may be revoked pursuant to Section 23.10.160 of the Land Use Ordinance.
10. Prior to initiation of the project, a qualified biologist shall perform a pre-crossing survey to verify that no listed or endangered species will be impacted as a result of construction equipment crossing the Arroyo Grande Creek.
11. Prior to initiation of the project, the applicant shall provide evidence of legal access to the project sites to the satisfaction of County Counsel in accordance with applicable county codes and state law.

CALIFORNIA COASTAL COMMISSION



CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060-4508
VOICE (831) 427-4863 FAX (831) 427-4877

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: DR. Neil LANGFORD
Mailing Address: PO Box 27
City: Pismo Beach CA Zip Code: 93448 Phone: 805 773 4771

SECTION II. Decision Being Appealed

- 1. Name of local/port government:
SAN LUIS Obispo County
- 2. Brief description of development being appealed:
CONDITIONAL approval of DRR for Minor Use Permit / Coastal Development Permit DRC 2006 00180 for Drive-up toilets in La Grande tract
- 3. Development's location (street address, assessor's parcel no., cross street, etc.):

La Grande tract

RECEIVED -
APR 01 2008

4. Description of decision being appealed (check one.):

- Approval; no special conditions
- Approval with special conditions:
- Denial

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

<u>TO BE COMPLETED BY COMMISSION:</u>	
APPEAL NO:	A-3-SLO-08-018
DATE FILED:	April 1, 2008
DISTRICT:	Central

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- Planning Director/Zoning Administrator
- ~~City Council~~ ^{County} Board of Supervisors
- Planning Commission
- Other

6. Date of local government's decision:

Jan 15 - 2008

7. Local government's file number (if any):

2008-32

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

*OHV State Parks & Rec
Arroyo Grande*

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1)

(See attached)

(2)

(3)

(4)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

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- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

11. This project cannot comply w/ Condition
(see attached)

Project not in SURA SURA's must be leased or purchased
Proposed driveway pockets not next to existing.
Categorical Exemption was for "accessory structures"
County Ordinance against vehicles in area
County General Plan says no OHV use from
Pier Ave to SURA. (Buffer Area)
Proximity to ocean not documented, though
testimony given that they were flooded
if reached by tide County, Federal,
state laws prohibit Ocean Contamination.

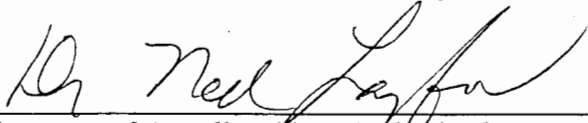
County Studies of Air + Water are underway,
this project should not be approved until
the effects of OHV use on water contamination
and downwind Air Pollution.

Encourage a City in LA Grande Tract goes against
Ocean's Specific Plan.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.



Signature of Appellant(s) or Authorized Agent

Date: Mar 30 08

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize _____
to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date: _____

March 30, 2008

California Coastal Commission:

RE : Appeal of County MUP/CP DRC2006-00180

APPEAL OF DR. NELL LANGFORD

Please see my comments below regarding Mr. Zilke's response regarding Condition #11.

My comments are in Bold

Condition #11.

Prior to initiation of the project, the applicant shall provide evidence of legal access to the project sites to the satisfaction of County Counsel in accordance with applicable county codes and state law.

Response:

The authority for vehicle access to the project sites is found in the Public Resources Code at Section 5001.8 (a) (2). The use of motor vehicles in state parks or on state beaches is confined to paved roads and other areas specifically designated and maintained for normal ingress, egress, and parking [emphasis added]. Consistent with this authority, the General Development Plan (GDP) for Pismo State Beach and Oceano State Vehicular Recreation Area (SVRA) specifically designates the beach for vehicle access to and from the SVRA.

Public Resources Code at Section 5001.8 (a) (2) does not apply for the following reasons:

"Motor vehicles" are defined differently from "off-road motor vehicles".

There is no authority in the Public Resources Codes to allow off-road vehicles (as opposed to motor vehicles) on state beaches.

The proposed drive-up toilets are not accessible by motor vehicles (as distinguished from off-road vehicles).

The Oceano Dunes State Vehicular Area does not include Pismo State Beach.

The La Grande Tract does not include Pismo State Beach.

The parcels of the proposed drive-up toilets are not on Pismo State Beach.

The previous drive-up toilets were located on Pismo State Beach. The proposed location is on parcels in La Grande Tract. They are supposed to be adjacent to each other, in order to qualify as "accessory structures" under CEQA.

The beach near the drive-up toilets is used for atv rental concessions and as a off-road vehicle staging area. This expansion of the ODSVRA onto Pismo State Beach is in violation of State law, Public Resources Code 5001.95 and interferes with the Pismo Dunes Natural Preserve, against State law, Public Resources Code 5019.71 and 5090.43.

The beach used for ingress and egress and parking is not a specific area, but is the entire beach. A natural beach, by its nature cannot be "maintained".

Crossing a live creek is not "normal", especially for thousands of forty foot campers. The County recognized

that this is not “normal” and imposed Condition #10 requiring habitat monitoring when construction equipment crosses the creek. The same should be apply for campers.

Motor vehicles are prohibited below the mean high tide line on State Lands. No permit has been obtained from State Lands for ingress and egress and parking below the mean high tide line, and there is no “confining” or “specific designation” to prevent trespass as required by RC 5001.8.

Parking on Pismo State Beach is not allowed. The permit for the Pier Avenue Ramp requires that vehicles do not remain stationary. There is no Coastal permit for a parking lot on Pismo State Beach. Contamination from such activity is prohibited by the Clean Water Act.

Nor does local ordinance bar vehicle access to the project sites. Specifically, County Code 15.44.140 purports to bar vehicle access.

“15.44.140 Vehicle prohibited--Exception.

It is unlawful for any person to drive, operate or ride in any motor vehicle within a distance of three hundred yards from the Le Grande Beach Pier and the mouth of the Oso Flaco Creek, or within a distance of three hundred yards from high water mark at any point between the Le Grande Beach Pier and the mouth of Oso Flaco Creek, excepting that this restriction shall not apply to the riding in or operation of any motor vehicle upon any dedicated public highway or by any person riding in or operating any motor vehicle to his place of residence. (Prior code § 10-013.2). “

Local ordinance, unless specifically allowed by the legislature in the form of an express waiver of the state's sovereign immunity, does not apply to state agencies. Some examples of cases where the courts have regularly upheld state sovereignty immunity from local rule or ordinance include:

- a. *Bame v City of Del Mar v 22d Dist. Ag. Assn.*, 86 Cal.App.4th 1346 (2001). Here, the City of Del Mar enacted an ordinance taxing admission to events in the city and event operators at the fair refused to pay the tax. The court held in favor of the fair: that it is a state entity subject to the sovereign immunity enjoyed by the state and that the city tax was not applicable to the fair event operators because they were performing a governmental function. The court summarized the rule as follows:

State agencies enjoy immunity from local regulation unless the state, through statute or provision of the California Constitution, has consented to waive immunity. Because the

state's immunity from local regulations is merely an extension of the concept of sovereign immunity, the consent to waive the immunity must be stated in express words in a statute. The issue of sovereign immunity is distinct from that of preemption. The sovereign immunity of a state agency from local regulation does not depend upon the source of the local governmental entity's authority to make regulations; it depends upon whether consent to regulation has been expressly stated by the Legislature or in the state Constitution. A state agency's immunity is limited to situations where the agency is operating in its governmental capacity. While the distinction between governmental and proprietary activity is no longer applicable to determine governmental tort liability, it remains viable in the context of encroachment of municipal regulations.
[See 8 Witkin, Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 796.]

b. *City of Orange v Valenti*, 37 Cal.App.3d 240 (1974). The state leased a building for an unemployment insurance office and the City enacted an emergency ordinance establishing special parking requirements for "public service buildings". The court found no statute or legislative enactment waiving the state's immunity from local rule saying:

When the state engages in such sovereign activities as the construction and maintenance of buildings or the leasing of a building, it is not subject to local regulations unless the Constitution says it is or the Legislature has consented to such regulations.
[See Cal.Jur.2d, State of California , § 5.]

Allowing vehicles on the beach is purely a governmental function to allow public enjoyment and recreation in the state park and SVRA.

The legislature has not waived the state's sovereign immunity with regard to local control of state parks. We are not aware of, nor can we find, a state statute expressly waiving the state's sovereign immunity with regard to the SLO County Ordinance 15.44.140. The Public Resources Code provisions governing state parks and state vehicular recreation areas do not contain such a waiver.

The above cases do not apply. The State has waived its sovereign immunity.

The current County ordinance is not limited to Pismo State Beach. It extends into La Grande Tract and the parcels of the proposed drive-up toilets.

All parcels in La Grande tract are governed by an "operating agreement" with the County. The State is subject to this agreement, since the proposed drive-up toilets are in

La Grande Tract. The State must ask the County for permission. The County has given its permission, but only if the State can prove it is in accordance with applicable county codes and state law. It is not.

The State is subject to the County's LCP, as stated in its Coastal Permit. The LCP states that the area of the proposed drive-up toilets is a Buffer Area where OHV use is prohibited.

Nor does such a waiver exist in the California Vehicle Code (CVC). Vehicle use on state park property is governed by the rules established by the Director. Except where such rules are otherwise, the provisions of the CVC shall govern on state park property. (See CVC Section 21113)

The proposed drive-up toilets are not in a state park.

State parks must be designated by the State Park Commission. Just owning the land does not make it a state park.

If the state has aquired land in La Grande Tract for the purpose of off-roading, it did so without the required determination of conformity of use required by the County.

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060-4508
VOICE (831) 427-4863 FAX (831) 427-4877



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Christie Camphorst
Mailing Address: 336 Juanita Ave
City: Oceanos Ca Zip Code: 93445 Phone: 248-953-2769

SECTION II. Decision Being Appealed

1. Name of local/port government: County of San Luis Obispo, CA
2. Brief description of development being appealed:
Conditional minor use permit
DRC 2006-00180 Driveup Restrooms
3. Development's location (street address, assessor's parcel no., cross street, etc.):

La Grande Tract

4. Description of decision being appealed (check one.):

- Approval; no special conditions
 Approval with special conditions:
 Denial

RECEIVED

APR 01 2008

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-560-08-018
DATE FILED: April 1, 2008
DISTRICT: Central

CCC Exhibit 2
(page 10 of 17 pages)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- Planning Director/Zoning Administrator
- City Council/Board of Supervisors
- Planning Commission
- Other

6. Date of local government's decision: 1-15-08

7. Local government's file number (if any): 2008-32

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1)

(2)

(3)

(4)

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San Luis Obispo Coastal Resource Policies conflict with the proposed project:

This project promotes overcrowding and overuse and is in conflict with pedestrian use. It encourages non-coastal dependent recreation that disturbs private property owners, and environmentally sensitive habitat. It is a Class preserve that has already been so degraded that the Pismo Class is almost extinct. It threatens the snowy plover, with no "Take" permit. It impacts Highway One.

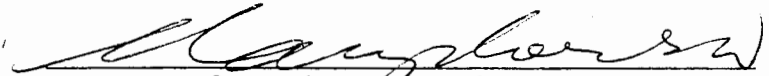
This project ignores the Clean Water and Clean Air Act, which violates County, State, and Federal public health and safety requirements. CEQA was not completed with, due to incorrect information and OTH being the lead agency.

By upholding our appeal, the Coastal Commission will put an end to inconsistencies and disconnects such as the County's General Plan designating the area of the proposed bathrooms as a buffer area.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.


Signature of Appellant(s) or Authorized Agent

Date: 3-31-08

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize _____
to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date: _____

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APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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SECTION I. Appellant(s)

Name: Kelly Devaney
 Mailing Address: 336 Juanita Ave
 City: Oceano, CA. Zip Code: 93445 Phone: 818-307-1444

SECTION II. Decision Being Appealed

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- Brief description of development being appealed: Conditional Minor Use Permit
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 - Approval; no special conditions
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TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-SLO-08-018

DATE FILED: April 1, 2008

DISTRICT: Central

CCC Exhibit 2
 (page 14 of 17 pages)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

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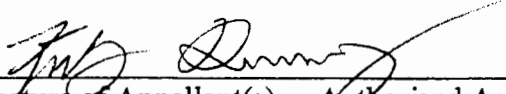
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Signature of Appellant(s)

Date: _____

Pismo State Beach and State Vehicular Recreation Area. Standards 4 through 13 apply to the development of the Pismo State Beach and State Vehicular Recreation Areas. (LCP)

4. General Development Plan Revisions. The General Development Plan (GDP) shall be revised in accordance with the Local Coastal Plan. The plan should identify a variety of recreational opportunities with use areas separated where possible to minimize conflicts. Passive recreational uses and nature study uses should be provided for in the sensitive vegetated areas restricted from OHV use. (LCP)

Approval of the GDP for inclusion into the County's LCP, or approval of a coastal development permit for a development within either Pismo Beach State Park or the Pismo Dunes State Vehicular Recreation Area, shall be subject to a finding that the State Department of Parks and Recreation is making a commitment for sufficient manpower to ensure resource protection, ordinance enforcement and access control in conformance with the conditions of Coastal Development Permit No. 4-82-30A. Should the terms and conditions of the coastal permit not be enforced or accomplished or should they not be sufficient to regulate the use in a manner consistent with the protection of resources, public health and safety and community values, then under the county's police powers, the imposition of an interim moratorium on ORV use may be necessary to protect resources while long-range planning, development of facilities and requisition of equipment and manpower is completed. (LCP)

5. Access Control. All access points to the park facility will be controlled. Primary access for off-road vehicles into the dunes will be as indicated in Coastal Development Permit No. 4-82-30A. (LCP)
6. Noise Control. Noise control measures shall be required for ORV use in proximity to natural preserve areas. (LCP)
7. Alternative Camping Areas. Alternative camping areas subject to the numerical limitations of Coastal Development Permit No. 4-82-30A may be appropriate in the dunes area and beach. These are dependent upon assurance that scattered sites will still allow for adequate environmental protection throughout the dunes. (LCP)

Back dunes camping areas shall be identified at locations outside of the buffers. Adequate sanitary facilities shall be provided. These back dunes camping areas shall be for tent camping or camping from four-wheel drive vehicles that can gain access to them. With provision of adequate improved facilities, heavier units (which would have a greater environmental impact when accessing the dunes) should make use of the designated staging area. For major events such as hill climbs and

competitions, state parks may authorize special access from the Oso Flaco causeway where it can ensure that adequate habitat protection exists. (LCP)

Beach camping in conformance with the numerical limitations of Coastal Development Permit No. 4-82-30A shall be permitted where it can be established that: a) administration of the entire park unit would not be adversely affected, b) control of total users can be maintained within acceptable carrying enforcement/capacity. The General Development Plan must identify area(s) for beach camping which would minimize conflicts with other users of the sandy beach. (It is estimated each campsite can accommodate from five to eight persons). Consistent with the provisions of Coastal Development Permit No. 4-82-30A, this limit can be adjusted either upward or downward based on monitoring of the impacts of this use. (LCP)

In addition, to the camping facilities for ORV users, the GDP must identify overnight and day use areas for non-ORV users, including hikers, horseback riding, etc. (LCP)

Peak OHV use on the six major weekends must be closely monitored to evaluate the impacts. Monitoring data shall be reviewed jointly by State Department of Parks and Recreation, the county, Department of Fish and Game and the Coastal Commission on an annual basis. Long-term reduction of the peak use may be necessary to ensure adequate resource protection. (LCP)

8. Habitat Protection. Natural buffer areas for sensitive habitat areas shall be identified and fenced, consistent with the provisions of Coastal Development Permit No. 4-82-30A and the stabilized dune areas. Habitat enhancement programs shall be undertaken for the following areas including programs such as stabilization of the dunes with appropriate native vegetation to protect encroachment on wetlands and surrounding agricultural land. (LCP)

- a. Dune Lakes
- b. Coreopsis Hill
- c. Oso Flaco Lake
- d. Little Oso Flaco Lake



Fences or other appropriate techniques shall be maintained where needed to preclude vehicular access in such areas as the Dune Lakes, Oso Flaco Lake and natural areas in the eastern portion of the park and lease area. (LCP)

9. ORV Use Area. ORV use shall be permitted only in identified unfenced vehicular use area. These areas are identified in Figure 4. No recreational ORV use will be allowed in the designated natural areas. These buffer areas reflect areas required for habitat protection and generally recognize the

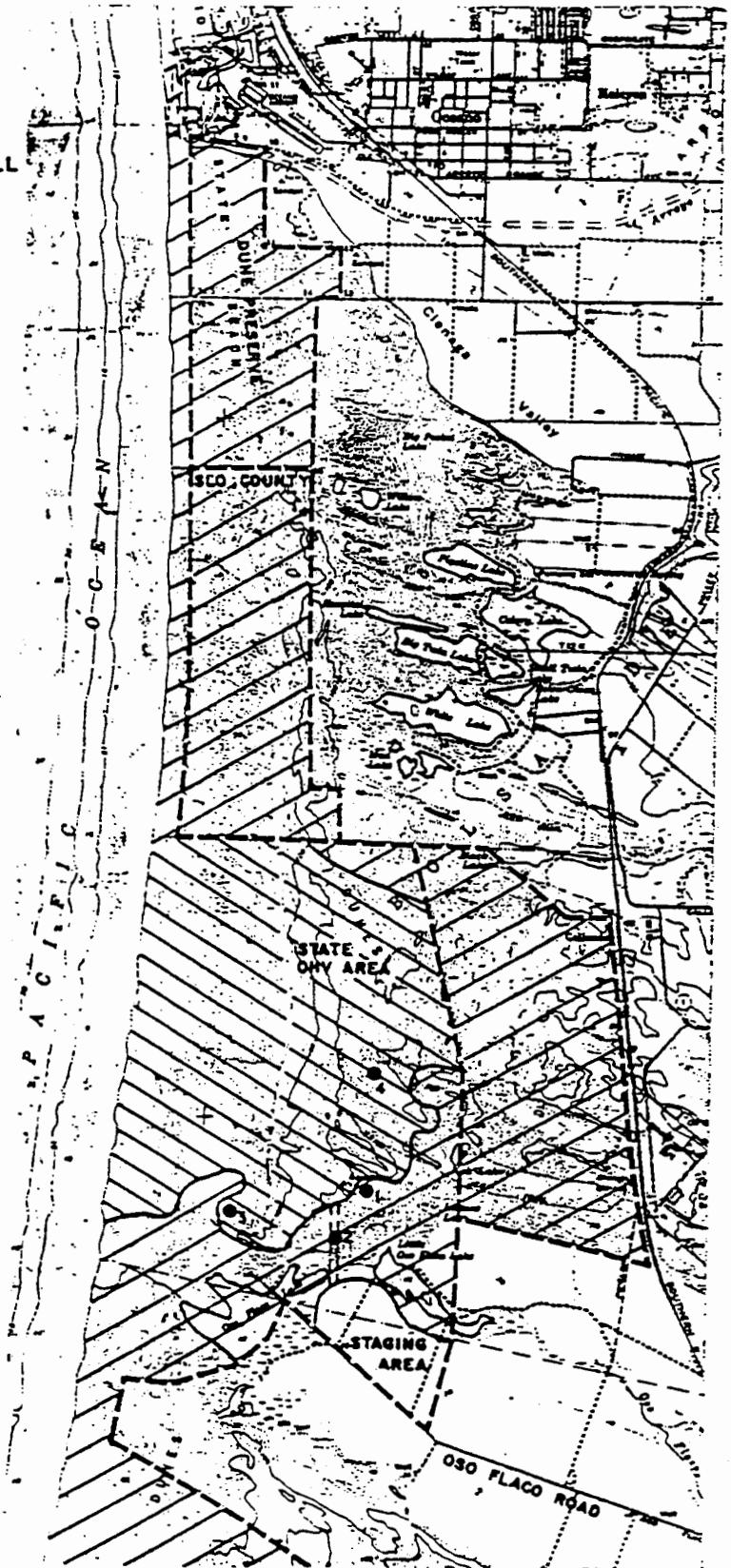
FIGURE 4

OFF-ROAD VEHICLE USE AREAS

LEGEND

-  OHV USE AREA
-  BUFFER AREA
- 1 LITTLE COREOPSIS HILL
- 2 OHV ACCESS CORRIDOR (Schematic)
- 3 MAIDENFORM FLATS
- 4 BOY SCOUT CAMP

SCALE



established lease agreement with Union Oil for the areas adjacent to the eastern portion of the park. ORV is prohibited in all vegetated areas. (LCP)

ORV use of the county held portion (generally lying between the sandy beach and Dune Lakes) shall be limited to the Sand Highway west to the sandy beach. This will minimize conflicts with the Dune Lake Properties to the east and the State Department of Parks and Recreation Dune Preserve to the north. The map of ORV use areas indicates a buffer area along these critical interface areas. (LCP)

10. Administration of County Holdings. The county-owned land south of the dune preserve shall be administered through a memorandum of understanding between the county and the State Department of Parks and Recreation. Management of the facility has been assigned to the State. This shall be reexamined periodically to establish the most appropriate management capability. (LCP)
11. Cooperative Education Programs with ORV User Groups. The Department of Parks and Recreation shall continue and where needed expand the dune users education program. This may include distribution of maps at major access points, identifying user areas and natural buffer areas. Involvement by local and state ORV groups are essential supplements to ensuring proper dune use. (LCP)
12. Archaeological Resource Preservation. To ensure archaeological resource protection, the State Department of Parks and Recreation should provide the fullest protection by fencing all known sites. (LCP)
13. Other Recreation Users. Non-ORV-dependent uses such as camping, hiking trails, and passive use areas shall be identified and developed. Equestrian centers shall be identified. Parking areas for this day use shall be incorporated. (LCP)

RURAL LANDS: The following standards apply only to lands in the Rural Lands land use category.

Guadalupe Dunes Oilfield. The following standards apply to three parcels comprising the 1,062-acre Rural Lands category within and adjacent to the Guadalupe Dunes oilfield Leroy Lease.

1. Limitation on Use. Uses allowed by Coastal Table 0 of the Land Use Element and Local Coastal Plan are limited to: agricultural accessory structures; aquaculture; crop production and grazing; coastal accessways; fisheries and game preserves; water wells and impoundments; petroleum extraction; accessory storage; pipelines and power transmission. (LCP) (Amended 03-14-89, Ordinance No. 2378)