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To: Commissioners and Interested Persons

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Subject: Oceano Dunes Coastal Development Permit 4-82-300 Review

REPORT SYNOPSIS

California State Parks operates a nearly 5,000-acre State Park in and around the City of Grover Beach and Oceano in south San Luis Obispo County, typically referred to as Oceano Dunes, and it is the only State Park in California where vehicles (including off-highway vehicles, or OHVs) are allowed on the beach and dunes. The California Coastal Commission retains the ability to make changes to Park operations through periodic review of its CDP that temporarily authorized uses and intensities of use at the Park in the 1980s, and found most recently in 2019 that driving at the Park has degraded dune habitats, harmed native species, caused air quality and public health issues, and made it difficult for the public to walk, swim and enjoy other non-vehicular activities at the beach and dunes. At that time, the Commission required State Parks to address all of these issues and more, including to evaluate phasing out OHV use altogether, and State Parks has now developed a draft plan in response (known as its public works plan, or PWP).

Commission staff has evaluated State Parks' draft PWP and believes that it is not consistent with the Coastal Act and the City of Grover Beach and San Luis Obispo County Local Coastal Programs (LCPs), which are the standard of review for the PWP. In particular, the PWP does not address the range of coastal resource impacts associated with the uses and intensities of use at the Park. Due, in part, to the concerns raised by the PWP, staff is recommending that the Commission amend the underlying CDP to address the coastal resource impacts caused by operation of Oceano Dunes and bring such operations into compliance with the Coastal Act and applicable LCPs. This includes recommendations to eliminate OHV use over a 5-year transition period, provide low-cost vehicular access/camping on the beach between West Grand Avenue and Pier Avenue (with no vehicles south of that point), close the Pier Avenue entrance in Oceano, and make a series of changes to protect natural resources in the Park (including the dunes, Arroyo Grande Creek, Oso Flaco Lake, sensitive species protections, etc.). Importantly, this recommendation would not close the Park, and it

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would continue to remain open and available both for general public use (including activities associated with beach day use, ocean activities, equestrian use, biking, hiking, fishing, birdwatching, etc.), and for vehicular/camping use in its northern reach.

Commission staff believes that given the information that is available to the Commission today, these conditions are required for the uses allowed at the Park to be consistent with the Coastal Act and LCPs, as well as to bring finality to at least 40 years of debate and discussion on these issues. Although staff recognizes that this recommendation will require a significant shift in Park operations, it will also allow for a different Park experience that is itself attractive for coastal visitors and that can serve as a regional economic engine, particularly for families looking for unique lower cost recreational and outdoor opportunities.

Staff's recommended conditions are found on pages 22 through 26 of this report, and the motion to implement staff's recommendation is found on page 22. For further information, including information translated into Spanish, see the Commission's Oceano Dunes webpage at <http://www.coastal.ca.gov/oceano-dunes/> (Para obtener más información, incluida la traducida al español, consulte la página web Oceano Dunes de la Comisión en <http://www.coastal.ca.gov/oceano-dunes/>).

SUMMARY OF REPORT AND STAFF RECOMMENDATION

The California Department of Parks and Recreation (State Parks or DPR) operates a large State Park in southern San Luis Obispo County in the 'five-cities' area seaward of the City of Grover Beach and the unincorporated community of Oceano. The Park extends along 8 miles of beach and shoreline, and includes an incredibly large, intact, and vibrant natural sand dune system that extends some 2 miles inland, for a total of some 4,750 Park acres (for comparison, the Park is almost five times the size of Golden Gate Park in San Francisco). The Park is part of the larger 18-mile-long Guadalupe-Nipomo dunes complex (the largest such intact coastal dunes system in the world, and a federally designated National Landmark) that extends from San Luis Obispo south into northern Santa Barbara County, and the Park is made up of portions of Pismo State Beach, the Oceano Dunes State Vehicular Recreation Area, and San Luis Obispo County- and Phillips 66-owned dune lands. The Park provides for a mix of uses currently (e.g., activities associated with beach day use, equestrian use, hiking, etc.), including being the only State Park in California that allows for street-legal vehicles to drive on the beach, as well as to allow off-highway vehicles (OHVs, for example, dune buggies) and beach camping. The California Coastal Commission issued State Parks a coastal development permit (CDP) in the 1980s that temporarily authorized the types and intensities of use at the Park, and also requires periodic reviews and updates of that CDP.

CDP review

Due to concerns that the currently allowed types and intensities of vehicular uses at the Park are both not allowed by applicable coastal law (i.e., the Coastal Act and the applicable local coastal programs (LCPs, here the City of Grover Beach and San Luis Obispo County LCPs)), and are also leading to significant impacts (e.g., precluding

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lower intensity Park uses, degrading dune habitats, causing significant air quality and public health issues, harming sensitive species, creating disproportionate adverse impacts on inland and underserved communities and tribal interests, etc.), in July 2019, the Coastal Commission required State Parks to address a series of Commission requirements as it developed its draft PWP. Among other things, the Commission requested that State Parks analyze a reduction in uses that are leading to these impacts, and the potential for a Park without OHV uses. The Commission also required that State Parks permanently modify a series of specific Park operational parameters through the PWP process to reduce or eliminate identified impacts. In response, State Parks has completed a draft plan (their draft Public Works Plan, or PWP). One of the purposes of the hearing for this item is for the Commission to provide feedback to State Parks on its draft PWP, but, because it is draft and State Parks' CEQA process is not yet complete, the Commission cannot take a final action on the draft PWP at this hearing. Thus, the only action that the Commission may take at this hearing, and at its discretion, is to amend the base CDP to include conditions that ensure uses and intensities of uses at the Park are consistent with the Coastal Act and the LCPs.

ESHA protection

In terms of the legal context, nearly the entire Park is designated by the Coastal Act and the LCPs as an environmentally sensitive habitat area (ESHA) within which the only type of uses allowed are those that are both dependent on the habitat to be able to occur at all (e.g., restoration, nature study, interpretive features, etc., also referred to as resource-dependent uses) and that don't lead to any significant disruption of habitat values. State Parks asserts in its PWP and associated materials that vehicular/OHV uses are resource-dependent. This assertion is not supported by facts, however, as OHV uses can – and do – take place outside of sensitive habitat areas, and they are not activities that are dependent on habitat to be able to occur at all. As such, they are not allowed uses in ESHA.

State Parks also asserts that these uses are essentially 'grandfathered' and should continue to be allowed because they claim such uses were authorized in the base CDP approved in the 1980s. The base CDP, however, only *temporarily* authorized such uses so that Parks would have time to explore modifications to Park operations to address coastal resource issues, including impacts to ESHA. At the time the CDP was original approved, it was anticipated that conclusions regarding what uses and intensities of uses at the Park could be found consistent with the Coastal Act and LCPs would be finalized within a couple of years (i.e., in the 1980s). Such conclusions were never made, though, and the base CDP still only temporarily authorizes these uses and intensities of use at the Park some four decades later. In other words, in approving the base CDP, the Commission did not find that OHV and vehicular uses are consistent with the Coastal Act and LCP ESHA protection policies; it simply allowed such uses until the Commission had the facts and information necessary to evaluate whether such uses are consistent with the Coastal Act and LCP. To date, the Commission has exercised its discretion to allow OHV and vehicular use in ESHA to continue on a temporary basis (albeit nearly 40 years and counting). Given the broad range of adverse coastal resource impacts caused by such uses, and given that State Parks'

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draft PWP, which is intended to replace the base CDP, proposes to allow these uses permanently (requiring a finding of Coastal Act and LCP consistency to do so), staff here recommends that the Commission evaluate, through an amendment to the base CDP, the impacts of such uses and their consistency with the Coastal Act and LCPs.

In addition, even if vehicular/OHV uses were allowed in ESHA, it is more clear today than it was in the past that such uses are leading to significant disruption of ESHA, thus also failing the second ESHA test. Specifically, evidence demonstrates that vehicular/OHV activity in dunes is one of the most disruptive activities that could be pursued therein, leading to broad degradation of these sensitive dune resources. Substantial evidence also shows that such uses have significant adverse impacts on sensitive species that reside in dune habitat. In addition, vehicles and OHVs destroy the natural dune structure and landform, including the surface area and associated dune vegetation, limit the ability of dune-adapted species to thrive there, including sensitive species protected under the state and federal endangered species acts, and essentially prohibit the dunes from achieving their natural habitat equilibrium.

Although Commission staff is sensitive to the impact that its recommendation has on OHV enthusiasts, staff does not believe that OHV use in ESHA can be found consistent with the ESHA protection provisions of the Coastal Act and LCP. The evidence is overwhelming that such uses degrade habitat and significantly disrupt habitat values, which is the basis for the staff recommendation. While the staff recommendation would phase out OHV use at this particular State Park, OHV use is still allowed in 8 other State Parks covering nearly 150,000 acres in California (over 225 square miles), and at some 70 other non-State Park facilities (most operated by the federal government).

Air quality and public health

In addition to their adverse impact on habitat, OHV and vehicular uses on the beach and in the dunes are leading to air quality and public health problems. Specifically, the San Luis Obispo County Air Pollution Control District (APCD), working with the California Air Resources Board (CARB), has also found that such use is leading to a significant and continuing dust, air quality, and public health hazard in the area inland of the Park, notwithstanding measures taken to date to combat these issues. Air quality regulators' studies conclusively demonstrate that the primary reason for the dust problems in and around the Park is that the dune geomorphology and composition is continuously being damaged by vehicular/OHV activity, and the sand is constantly being ground into finer and finer particles by such activities. Thus, when the wind blows, it blows across a looser sandy landscape lacking cohesion that is not packed together like undisturbed dunes, and it picks up dust particles, sometimes in very large dust plumes that can deposit dust over 12 miles inland.

In other words, APCD has determined that the primary cause of the dust problem associated with the Park is that the dunes are damaged by vehicular/OHV uses and are not allowed to recover from disturbance in a way that would naturally limit dust. In fact, where the dunes *have* been allowed to naturally recover from the damaging vehicular/OHV activity (e.g., at former vehicular and OHV use areas near Oso Flaco

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Lake), they are not as emissive and create much less dust. Further, air quality regulators have determined that the best way to most quickly abate such dust, air quality, and public health problems is via healing the dunes, including recreating the natural and vegetated dune landform and geology without vehicular/OHV use in these areas. It also is what the ESHA requirements of the Coastal Act and the LCPs require independently, but the fact that it is also required to help protect air quality and public health only serves to further underscore the need to take such action here.

Environmental and tribal justice

The byproducts of vehicular/OHV use also directly affect underserved communities adjacent to the Park, not only due to dust and its associated air quality and public health problems, but also due to the effect that the beach and dune degradation associated with such uses has on these communities' environment and economic prosperity. These impacts are felt particularly strongly in the community of Oceano, directly inland of the Park, which is approximately half Hispanic/Latino. In fact, the vehicular/OHV use at the Park raises a classic environmental justice question of who benefits from and who bears the burden of such use. Here, the beaches fronting the community of Oceano are given over to vehicles, and general non-vehicular beachgoing activities are thus significantly curtailed. In addition, Pier Avenue, which forms the heart of the most coastal portion of Oceano, shares few of the types of uses and development that are typical of thriving beach-fronting towns, and that can form the engine for their economic prosperity. Rather, the area has seen neglect, and is known more for being the road where cars queue up to access the Park than for being a beach community. And perhaps most notable, Oceano is the first inland community affected by the dust generated at the Park, followed by the unincorporated community of Nipomo about two miles inland and directly downwind of the Park, and also locations in Santa Barbara County (e.g., the Cities of Santa Maria and Guadalupe, which are also predominantly Hispanic/Latino (70% and 90% respectively)). In short, unlike the more affluent beach communities in the area, such as Avila Beach and Pismo Beach, the residents of Oceano have no options for beach recreation free of cars fronting their community, and these residents bear the significant burden of air quality and public health problems, with little benefit from Park operations.

In addition, the use of the beach and dune areas for vehicular/OHV use has also been a long term concern for the Northern Chumash, who indicate they were not adequately consulted when the initial CDP was approved and when the LCP was first certified for this area. The Northern Chumash do not support continued OHV use, and they consider the Park to include areas that are sacred ancestral lands that should not, in any circumstance, be used in these ways. The Yak Tityu Tityu Northern Chumash share similar concerns, and both tribes find the Park to be a sacred natural place. They have asked that the vehicles and OHVs that degrade this area be removed so that this sacred natural space can be honored and cherished. In short, tribal consultations prior to this hearing reveal that current Park uses and past Commission actions have not fully taken into account tribal concerns about vehicular and OHV use at the Park. Rather, to date, the Commission has allowed all of the things that the tribes adamantly oppose, and have for many years. The staff recommendation would address these tribal

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concerns through the proposed phase out of OHV uses. In the end, it is also clear to staff that what the tribes *want* is what the law actually *requires*, including in terms of ESHA, air quality and public health, and environmental justice issues as described above.

Thus, staff believes that the Commission must assess Park uses and intensities of uses with the interests of tribal communities and disadvantaged communities in mind, consistent with the Commission's Environmental Justice and Tribal Consultation Policies, including to address historic and generational inequalities that are at least partially due to the effect of Park operations on surrounding areas. And, importantly, as with air quality and public health concerns, the solutions to environmental justice and tribal concerns are the same things required by the Coastal Act and LCPs for coastal resource reasons independently, again underscoring the many reasons requiring changes to allowed uses and intensities of use at the Park.

In addition, by addressing these environmental justice and tribal concerns, there will be significant opportunities created for those communities, including Grover Beach and Oceano. For example, the elimination, or at least significant reduction, of air quality problems by itself is a critical public health objective, but it can also have a significant positive impact on the prosperity of these inland communities too. In fact, Park changes that might allow Oceano to capitalize on its beach-fronting location, allowing the community enhanced opportunity for revitalization, including through directly connecting the community to its beach, would bring with it the types of opportunities that help other California beach towns to prosper. Similarly, a Park without OHV use allows for the tribes to access their ancestral and sacred spaces without the noise and habitat degradation that this use brings. In other words, by eliminating vehicular and OHV uses in ESHA, consistent with the Coastal Act and LCPs, there is also the potential to help both the directly inland communities and the five-cities area realize new opportunities for community revitalization and enhancement. Such action would also be consistent with tribal interests and recommendations.

Planning and permitting

Many of the above-described coastal resource impacts are not newly identified issues, but rather have been identified as potential impacts requiring resolution since the base CDP's initial approval in 1982. That CDP remains the fundamental Coastal Act regulatory instrument that governs current operations, as well as any next steps at the Park. Since the 1982 approval, the Commission has exercised its discretion not to make major changes to the CDP, in part in response to State Parks' requests that the Commission not take such actions, but instead to defer to State Parks and to allow more time for State Parks to come up with solutions. As a result, the coastal resource impacts described above have remained unresolved for decades. In fact, because of the interim nature of the base CDP approval, State Parks is also out of compliance with core aspects of the CDP, including the requirement to finalize Park entrance locations that were required to be resolved in the 1980s. To this point, the Park is currently accessed by vehicles in the northernmost part of the Park, at West Grand Avenue in Grover Beach and Pier Avenue in Oceano. These vehicles then drive down the beaches

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fronting Grover Beach and Oceano some three miles until they reach the start of the OHV and beach camping areas. This not only brings with it the type of conflict that is inherent between vehicles driving on the beach and more typical beach going activities for many miles in front of Grover Beach and Oceano, but it also leads to significant habitat problems, perhaps the most obvious being that these vehicles drive right through Arroyo Grande Creek when it flows to the ocean. Arroyo Grande Creek is home to several sensitive species, and the Commission has been very concerned about the damage to creek resources from these creek crossings for decades. And south of the creek is USFWS-designated critical habitat for the western snowy plover, only exacerbating these issues once vehicles make it through/past the creek and into the camping and OHV areas further south within that critical habitat.

In 1982, the base CDP required State Parks to find alternate entrances to the Park, including a potential southern entrance (that could avoid the need for vehicles to access the Park from the north). Although State Parks has done studies and unilaterally concluded that the West Grand and Pier Avenue entrances should be the permanent vehicle entrances for the Park (including in its draft PWP), the Commission has never analyzed or authorized permanent use of these entrances, as is required by the base CDP. Thus, under the Coastal Act, they remain only temporarily authorized some 40 years later.

Also fundamentally elusive, and another issue that was meant to be resolved under the CDP back in the 1980s but never has been, is the question of the carrying capacity of the Park to provide for uses and intensities of use that could be found consistent with the Coastal Act and the underlying LCPs. To date, some have argued that the carrying capacity of the Park for vehicles/OHV is zero, and others that it has not even been reached now and that vehicular/OHV use should be expanded. Starting in 2001, the base CDP was modified to task a technical review team (or TRT) with this effort, and also to further study the impacts of vehicular/OHV use on the beach and dunes and to develop recommendations regarding appropriate management of such impacts. Ultimately, the TRT program proved unable to successfully meet this challenge, and the Commission has not made significant changes to allowed uses and intensities of use at the Park over time, including to the key question of its carrying capacity. And, like the Park entrance question, the Commission's CDP reviews only continued to authorize vehicular/OHV use on a temporary basis, and thus, from a Coastal Act perspective, such use is considered temporary. From the time of the original CDP decision to now, the Commission and State Parks have discussed numerous ways to help define the carrying capacity of the Park, and that might allow the uses and intensities of use State Parks requested while protecting coastal resources consistent with the law. To date, however, no carrying capacity has been identified that would adequately protect coastal resources (and in fact, State Parks PWP includes provisions for again pursuing new carrying capacity studies in the future).

Finally, some have argued that because OHV and vehicular use was recognized in the base CDP and not eliminated in subsequent CDP reviews, such uses have the status of a vested right. That assertion is based on a misunderstanding of the nature of the

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1980s-era approval and the subsequent CDP reviews, which were always intended to be temporary. In fact, the actual purpose of the CDP review requirement codified in the base CDP is to allow the Commission to renew the temporary authorization for another year. If the Commission is satisfied at the CDP review stage that Park operations are adequately protecting coastal resources, the Commission can temporarily authorize such uses for another year. For decades, the Commission allowed the TRT process to evolve, with the expectation that it would study the effects of vehicular and OHV uses at the Park and make recommendations that could appropriately protect coastal resources under the law. But that process has proven unsuccessful. Importantly and conversely, the CDP review process also allows the Commission to find that coastal resources are *not* being protected at the Park and to *not* temporarily re-authorize such uses for another year.

In sum, since approval of the base CDP, the Commission has worked with State Parks to try to address the significant coastal resource impacts caused by vehicular and OHV uses at the Park. However, staff believes that such efforts, while well-intentioned, have not actually adequately protected coastal resources consistent with the requirements of the Coastal Act and the LCPs. And again, to date the Commission has exercised its discretion to allow uses and intensities of use at the Park temporarily, but the Commission has not taken an action on whether and to what extent vehicular and OHV uses and intensities of use are consistent with the Coastal Act and the underlying LCPs on a permanent basis. Although the Commission could continue to exercise its discretion to continue to allow the Park to operate as it has in the past temporarily, staff does not recommend the Commission do so. Simply put, such recommendation is based in the fact that there is such significant evidence now of the coastal resource impacts of such uses and intensities of uses that it is time to draw conclusions, including to take final actions under the law.

State Parks' draft PWP

Given the challenges of attempting to address Coastal Act and LCP compliance issues through the base CDP, State Parks initiated the PWP process, and has now developed a draft PWP as its proposed solution. Although State Parks was directed by the Commission in July 2019 to address 15 specific requirements in its PWP, and to explore transitioning the Park away from OHV use more broadly due to the types of impacts it engenders, the draft PWP proposes to both maintain significant vehicular and OHV uses at the Park, and also proposes to expand vehicular/OHV and related development at the Park into ESHA areas that are currently off-limits to such activities. The draft PWP does not include many changes to address the range of coastal resource issues and constraints identified by the Commission over many years, and particularly in its action in 2019, and it essentially maintains existing operation areas as before leading to essentially the same sets of legal and coastal resource problems identified by the Commission in July 2019.

In terms of specific projects identified in the draft PWP, State Parks proposes to expand public recreational access, particularly camping and OHV use, through new acreage and infrastructure dedicated to such use. Staff believes that some of the proposed

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major projects, such as lifeguard facilities, dune boardwalks, and the Butterfly Grove improvements, can likely be found consistent with the LCPs in some form. However, other projects raise significant LCP concerns, such as a new road through dunes from the Park corporation yard area, and projects proposed in the Oso Flaco Lake and Phillips 66 areas. In fact, the draft PWP envisions multiple hundreds of camping and RV spaces (including cabins), multiple new entrances for OHVs to access the current riding area (through untouched and currently off-limits dune ESHA and other ESHA areas), additional new area for OHV use (e.g., new staging areas, pump tracks, training areas, lighted activity areas, etc.), and related development (including rental/concessionaire space, an OHV historic museum, weapons range, State Parks staff housing, etc.) that Commission staff believes cannot be found consistent with the ESHA and agricultural conversion/protection requirements of the LCPs.

In addition, staff is concerned that the draft PWP does not fully address the issues identified by the Commission in 2019. Although referenced and discussed in the PWP, the ways in which the Commission's direction is addressed varies considerably. In some cases, the PWP provides few concrete details about how the direction will actually be addressed. For example, the draft PWP includes general statements about improving outreach to underserved and tribal interests and to better enforce Park rules, but there is little specificity in these statements. Similarly, the draft PWP eliminates the TRT, but it is not proposed to be replaced with a more standard mechanism for monitoring Coastal Act/LCP compliance and reporting to the Commission. Summarily, predator management efforts are also not well defined in the draft, and State Parks has not identified how it will manage the open trash containers at Post 2 past potential conceptual options to be considered.

More detail is provided related to the Commission's direction on certain points. For example, the draft PWP eliminates holiday exceptions to maximum daily use limits (for street-legal vehicles, camping, and OHVs), and reduces those limits, both reflective of the Commission's direction. But, based on new PWP data, State Parks indicates that those limits were rarely reached in the first place other than during holidays and summer weekends, and it appears that the proposed lower limits are more reflective of current actual usage levels (and also a function of reduced space within which to allow vehicles due to State Parks' dust control efforts), which is what is leading to the types of coastal resource problems identified by the Commission in 2019. Another concern with the draft PWP on this point is that State Parks indicates that it intends to pursue another carrying capacity study for the Park, and the PWP identifies that the proposed use limits are subject to change after that study is complete, but there is no mechanism for assessing whether that subsequent change in intensity of use is consistent with Coastal Act and LCP requirements.

For some of the other issues identified by the Commission in 2019, staff does not think the draft PWP addresses them in any detail, and in some instances may actually exacerbate the identified resource impact. For example, the Commission also required that State Parks address through permanent conditions in its PWP, a prohibition on vehicular crossings of Arroyo Grande Creek and nighttime vehicular/OHV use, due to

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the significant habitat degradation associated with such activities. However, the draft PWP continues to allow both nighttime vehicular/OHV use and Arroyo Grande Creek crossings, and suggests that State Parks will further study the issue for potential future changes. Similarly, the Commission's direction was for State Parks to undertake an entrance study to address the many issues associated with the two accessways into the Park at West Grand and Pier Avenues, particularly since the impacts associated with Park entrances were what necessitated the Commission's interim CDP approval in 1982. The draft PWP, however, simply concludes that the two entrances are the environmentally superior entrances and they should be deemed permanent, without an analysis of alternatives. In addition to those entrances, State Parks proposes new OHV entrances in the south (at Phillips 66 and at the Oso Flaco Lake area). Thus, the draft PWP both proposes to keep the existing entrances as-is, and also proposes to *increase* coastal resource impacts by adding new entrances with their own adverse impacts.

The draft PWP also does not adequately address the Commission's requirement that State Parks address, through permanent conditions in its PWP, making the roughly 300-acre seasonal enclosure located along the beach and fore dunes in the southern part of the Park permanent. Instead, the draft PWP proposes to keep the enclosure seasonal, and to reduce its spatial extent by 109 acres, where those 109 acres would then be available to vehicular/OHV use all year round. In addition, State Parks proposes to expand OHV riding in the same general area as the newly opened up 109 acres into a currently off-limits and restored dune ESHA area nearest Oso Flaco Lake. This would add an additional 40 acres of OHV area to the overall riding area, and reduce protected ESHA areas the same amount. Thus, the seasonal enclosure would be reduced by about one-third, and new, undisturbed ESHA area would be opened to OHV use. It is clear to staff that such proposals would result in significant ESHA degradation inconsistent with the Coastal Act, the LCPs, and the existing CDP (that previously required restoration in the area that would be opened up to new OHV uses under the PWP).

Further, a large part of the impetus for the PWP was to rethink Park operational measures in order to better protect sensitive habitats while also addressing vehicular and camping needs, particularly in light of potential changes to where and how such recreational offerings were to be provided. Another part of State Parks' stated objectives was to coordinate the various planning efforts that affect Park operations, including the CDP, the PWP, the HCP, dust control efforts, and more recent collaborations with the California Department of Fish and Wildlife (CDFW), and to update and refine operational measures all in one place. Although the PWP references the draft HCP (2020) and CDFW's 2021 Oceano Dunes Biodiversity Management Plan documents, State Parks proposes them to be separate documents, and State Parks does not intend them to be a part of the PWP that would be certified by the Commission (i.e., only PWP Volume 1 would be before the Commission). So, while these documents can offer direction to State Parks as regards Park management, they cannot offer enforceable direction under the PWP (and thus under the Coastal Act and LCPs), including as they could be modified in ways that may not be allowable by the Coastal Act and the LCPs without a PWP amendment. In addition, these other documents have been drafted for

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their singular purposes, and it would take significant work by State Parks to integrate them into the PWP, including to address various differences in the documents (e.g., USFWS recommends one buffer for sensitive bird species, and CDFW recommends another, and that is but one example).

Finally, the draft PWP does not address the dust, air quality, and public health issues associated with Park operations. It instead suggests that these issues will be addressed separately between State Parks and the APCD. In addition, the draft Environmental Impact Report (DEIR) associated with the draft PWP presumes that current dust and air quality impacts are the baseline for analysis, and thus does not even evaluate the considerable impacts to air quality caused by dust from the Park. The only air quality mitigation measures recommended by the DEIR are related to construction equipment and activities that would be associated with the proposed PWP projects, and there are none related to dust, air quality and public health problems associated with either current vehicular/OHV uses or the expanded vehicular/OHV use areas associated with the PWP's projects.

The draft PWP also concludes that almost all of the operational activities described at the Park are all "routine programs exempt from Coastal Act compliance." The PWP indicates that they are identified in the PWP "for disclosure purposes," but that they are "ongoing and routine maintenance and management programs do not require any specific notifications or permits." Thus, State Parks proposes to continue these activities without any underlying Coastal Act or LCP authorization. Such activities include the types of significant grading, beach grooming, and fencing activities that have long raised significant Coastal Act and LCP consistency questions. And many such activities lead to significant coastal resource degradation, including in ESHA (and led to the Executive Director's Cease and Desist Order issued to State Parks in 2020). The overwhelming majority of such activities are not currently even temporarily authorized by the base CDP, and many such past activities have been tracked by the Commission as CDP violations and must be authorized under the Coastal Act.

A primary objective of the PWP, from the Commission's perspective, was and is that it be sufficiently detailed to be able to cover all of the development at the Park, in both the least environmentally damaging feasible manner possible, as well as in a way that is enforceable under the PWP. Staff believes that the draft PWP falls short of this objective, as it does not even cover the vast majority of these ongoing activities that have had significant coastal resource impacts for years. Further, the Commission asked State Parks to evaluate an OHV-free Park alternative. The draft PWP does not analyze such an alternative, and instead proposes significant expansion of OHV use into the Oso Flaco and Phillips 66 areas (including new OHV use areas as well as new OHV roads through untouched and currently off-limits dune ESHA area), and it proposes new OHV access through dune and Oso Flaco Lake area ESHAs as well. The DEIR, too, summarily dismisses eliminating OHV uses at the Park, asserting that to do so would be inconsistent with OHV Law, which staff does not believe to be the case.

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Finally, staff's overarching concern with the draft PWP is that it is required to be consistent with the underlying LCPs in order to allow it to be approved by the Commission. As described above, however, it proposes uses, intensities of use, and projects that are not LCP consistent. As described above, vehicular/OHV use is not allowed in ESHA under the applicable LCPs, and almost the entire Park constitutes ESHA, including all of the OHV riding and camping areas. Under the LCPs, the only areas of the Park that do not constitute ESHA are the flatter beach areas to the north near West Grand and Pier Avenues, and some active agricultural lands near Oso Flaco Lake. These existing uses and intensities of use are not "grandfathered" development under the Coastal Act, as discussed above. As a result, all uses and intensities of use at the Park are required to be found LCP consistent, and it is clear to staff that they cannot be found so consistent. The same applies to the projects proposed to be included in the PWP, including the two most significant projects at the Phillips 66 site and Oso Flaco Lake. These projects are primarily proposed in ESHA or on active agricultural lands and are therefore unapprovable under the LCPs due to impermissible ESHA and agricultural conversion and degradation.

In short, the draft PWP is both inconsistent with the Coastal Act and the applicable LCPs, and is inadequate to address the range of legal and coastal resource impacts that are associated with the types and intensities of uses proposed at the Park. It will take significant work, but staff remains committed to working with State Parks to develop a modified PWP that addresses these issues, following Commission action here on the base CDP.

Coastal Act and LCP sideboards

As described, the Commission has used its discretion through the annual review process to allow Park activities to continue based on temporary and interim use parameters for decades. It has become clear, however, that the coastal resource issues and constraints affecting vehicular/OHV operations at the Park are only becoming more acute. Thus, staff recommends that the Commission here determine that it is not appropriate to continue to allow the Park's status quo without changes, as the Commission has done in the past. It is also particularly appropriate at this time to provide guidance to State Parks on how the PWP must be modified to ensure that it is consistent with the Coastal Act and LCPs. The Commission has already identified significant impacts with existing uses and intensities of uses at the Park, including air quality and public health, rare and endangered species and habitats and ESHA, environmental justice, and tribal concerns. It is clear to staff that it is time for the Commission to exercise the discretion provided to it by the CDP to help start to resolve these significant coastal resource impacts associated with ongoing uses and intensities of uses at the Park.

For the Commission to address these ongoing coastal resource impacts, it must evaluate the type of changes needed to best meet Coastal Act and LCP objectives and requirements. This includes addressing the requirement to maximize public access and recreational opportunities in a manner that is consistent with the protection of coastal resources. Such evaluation requires that the Commission evaluate known issues,

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problems, and constraints, and identify which uses and intensities of use can be accommodated consistent with the identified Coastal Act and LCP requirements. In that regard, the staff recommendation is not intended to supplant State Parks' planning role, but rather to identify the Coastal Act/LCP parameters that apply at the Park.

Perhaps the most critical legal constraint is that vehicular/OHV use is not allowed in ESHA under the Coastal Act and the applicable LCPs. And even if such uses were allowed, they cannot be carried out in a manner that does not result in significant disruption of habitat values, making it inconsistent with the Coastal Act and the LCPs for this reason as well. Staff believes that these legal constraints emanate from the Coastal Act and the LCPs, and *also* from the OHV Laws (including Public Resources Code Section 5090.01-5090.65, as amended; although the Commission implements the Coastal Act, not the OHV Laws, staff has done an analysis of this recommendation in relation to those laws).

Specifically, some have argued the law that covers OHV use within certain State Park units essentially "overrides" the Coastal Act and other applicable state laws. However, the Coastal Act and OHV Laws are co-equal state laws and must be harmonized, if possible, and the Commission's obligation is to implement the Coastal Act. Staff believes that this argument is also unsupported by the actual text of the OHV Laws. Both the OHV Laws and the Coastal Act promote providing public access and recreational opportunities (where the Coastal Act speaks to the use more broadly, and the OHV Laws are OHV-specific), but not at all cost. Specifically, both laws require such recreation to be undertaken in a manner that doesn't lead to adverse impacts to natural resources, and both allow for the reduction or even cessation of recreational uses so as to meet applicable resource protection requirements. Both laws suggest that OHV use at the Park no longer meets these requirements, and thus elimination of this use is consistent with both the Coastal Act and the OHV Laws. In fact, no legislative action would be required, even under the OHV Laws, if the Commission were to require the elimination of OHV use at the Park.

Some have also argued that elimination of OHV use would be inconsistent with laws associated with the use of OHV Trust Fund monies. While this, too, is not the Commission's standard of review, recent analysis of the state gas tax, which is applied to the purchase of all gas in California, suggests that most of the monies directed into the Trust Fund actually comes from non-OHV users. In fact, it appears that about 70% of the gas tax that is directed into the Fund comes from non-OHV users, due to methodological and calculation issues with the gas tax formula. Thus, applying that calculation, about half of the OHV Fund's FY 2020-21 revenues (about \$37 million of the \$75 million in revenues identified for FY 2020-21) comes from non-OHV users. In addition, the Park was actually purchased almost entirely with State General Funds, and not OHV Trust Fund monies, in any case. More importantly, these considerations are not the responsibility of the Commission when evaluating whether uses and intensities of uses at the Park are consistent with the LCPs and Coastal Act.

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In addition, the Park *does* include some non-ESHA beach areas to the north, and these areas provide a potential location for the Commission to consider recreation types that might be more intensive than general beach use. This non-ESHA beach area extends from near Arroyo Grande Creek to West Grand Avenue. Although these areas are not ESHA, they are subject to all other LCP policies, including those protecting public views, community character, and landform alteration. Thus, the area between West Grand and Pier Avenues (or about one and a quarter beach miles) is potential area for the Commission to consider more intensive recreational uses, including the potential for street-legal vehicular uses and/or beach camping. These uses have been identified by most commentors as important to their continued enjoyment of the Park, including ensuring ADA access to the beach.

The more southern areas of the Park, especially near Oso Flaco Lake, consist of ESHA. As described above, vehicular and OHV uses are not consistent with ESHA protection policies. Eliminating vehicular activities south of Pier Avenue will better protect affected ESHA and other resources in that area, while also addressing and resolving the impacts of such use on the community of Oceano as well as impacts on air quality and public health. Thus, staff recommends that the Coastal Act sideboards suggest that the area south of Pier Avenue be reserved for non-vehicular beach uses and, further south, enhanced habitat protections.

Opponents of this staff recommendation have argued that elimination of OHV uses at the Park will have significant adverse economic impacts to the area. Specifically, they point to State Parks' economic analysis from 2016 that suggests that the Park brings in an estimated \$243 million annually to the San Luis Obispo County economy and generates some 3,300 local jobs. The Commission was provided a professional critique of this analysis when it reviewed the CDP in 2019. That critique suggested that the analysis was deeply flawed, and that the economic benefit from the Park was significantly overstated.

Given such conflicting information, Commission staff contacted Dr. Philip King, a professor of economics at San Francisco State University, and an expert on beach and park recreational/economic impacts, for a third-party peer review of State Parks' analysis. Dr. King concluded that State Parks' analysis was fundamentally flawed and that it didn't follow normal and standard professional procedures for such studies. He also noted an arithmetic error that inappropriately increased the total impact of the Park by about \$120 million, or nearly half of the study estimate. Dr. King also identified that the study improperly focused only on OHV use versus closing the Park to all use, and that it significantly overestimated OHV's economic value to the area, including because the analysis doesn't quantify OHV costs and it equates *all* Park benefit to OHV benefit, as if OHV is the sole source that can provide any economic activity. Dr. King also indicates that in his professional opinion, the analysis essentially asks the wrong questions, thus limiting its value as a tool for decision-makers. In fact, the more appropriate set of questions and evaluation would be based on the costs and benefits of different recreational offerings at the Park, but State Parks' analysis does not provide the information necessary to make this evaluation.

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Dr. King's conclusion was that the Park would remain a vibrant State Park unit without OHV use, would remain a valuable asset to the area, and that a different Park that did not provide OHV uses but that accommodated less intensive forms of recreation would be at least as valuable to the region economically as the current Park operation. This suggests that potential economic impacts associated with changes in use and intensities of use at the Park, including as the Coastal Act and LCPs direct, aren't likely to significantly alter its economic effect on the area.

And to this point, staff notes that some local communities directly adjacent to the Park see an untapped potential to create an even better economic model in relation to the way the Park affects local economies, one that can be built on a more sustainable set of recreational opportunities, and one that will bring benefit to their communities. In fact, prior to developing this staff report, staff held a series of outreach meetings to discuss Park issues and understand from community stakeholders, including business representatives, groups (including the OHV community), and local governments about their visions for the future of the Park. While OHV groups understandably argued for continued and increased OHV use (and suggested partnering to make the Park a better model for environmental sustainability while providing for same), many acknowledged the potential for a Park without OHV use to cater to new and diverse sets of users that would venture to the Park's new and diverse recreational offerings, particularly lower cost and unique offerings that could be provided at the Park absent OHV use, including car camping, beach bicycle riding, equestrian tours, dune tours, and new beach-oriented concessionaires (e.g., beach and surf equipment, kayaks, fishing). Notable among this group is the Oceano Advisory Council, which is the County body that represents the Oceano area and that provides recommendations to the Board of Supervisors regarding Oceano matters, who supported staff's recommendation at the July 2019 Commission hearing on these matters, and that also supports this recommendation in 2021.

And finally, the period of time that the Park was closed to vehicles/OHV due to Covid-19 in 2020 allowed the community to evaluate the Park without vehicles and OHV use. Without such more intensive uses, the Park still saw significant general beach use fronting both Grover Beach and Oceano, where such uses did not have to dodge vehicles. In addition, the Park also saw a significant increase of habitat activity in the southern part of the Park as the beach and dunes were left alone, and sensitive species thrived. And during all of this time local government and community leaders confirm that the local economy did not precipitously decline, rather that economic activity in the communities actually *increased*, despite the restrictions imposed due to the pandemic.

To conclude, staff recommends that the Park cannot continue to operate as it has in the past due to the numerous coastal resource impacts caused by current vehicular and OHV use. And that the Commission may make the necessary changes that best address these coastal resource impacts through this CDP review. It is clear to staff that such changes are necessary both to ensure Coastal Act and LCP consistency, but also to provide State Parks with direction as it revises its draft PWP. Ultimately, the range of legal and coastal resource issues and constraints affecting the Park together require

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that the Park transition away from high-intensity vehicular/OHV use to other forms of public access and recreation. And in particular given that State Parks' draft PWP proposes even more vehicular/OHV use areas than is even currently the case despite the legal and coastal resource issues engendered, it is clear that Commission direction to State Parks is timely. In addition, it is also clear that immediate changes to address acute coastal resource issues are necessary in the very short term.

Staff recommendation

Staff recommends fundamental changes at the Park through modifications to the base CDP's terms and conditions. First and perhaps most critically, staff recommends that all OHV use be eliminated at the Park. Although staff believes that OHV use in ESHA is not consistent with the LCPs or Coastal Act, leading to a conclusion that such uses should cease immediately, staff recognizes that this is a large State Park and a significant operation. It may take some time to modify the way in which the Park operates (including related to budgeting, planning, and making the physical changes needed) and the ways in which users adjust to the new Park offerings. Thus, staff recommends a five-year transition, where the area allotted to vehicular/OHV use would only be allowed on a temporary basis (and could even be reduced in the interim subject to State Parks' planning efforts).

Second, the LCPs potentially allow for more intensive recreational offerings in the north of the Park. Staff recommends a new vehicular beach camping area between West Grand and Pier Avenues, including for ADA vehicle access. Staff recognizes that these unique recreational access opportunities are revered at the Park, including as it is the only State Park in California where such vehicle access and beach camping is allowed. Staff believes that such uses can be accommodated in a way that is consistent with the Coastal Act and the LCPs given that the flat sandy beaches in this northern reach of the Park do not constitute ESHA. Ultimately, under the staff recommendation, after the five-year transition, all vehicular use would be confined to this area, and vehicles would not be allowed south of Pier Avenue.

In addition, although the areas to the south of the Park primarily constitute ESHA, staff believes that there is the potential for State Parks to accommodate a small, low-key, interpretive camping experience in this area. Such area would only be accessed via hike-in and bike-in, allowing for a more primitive overnight experience in an area just upcoast from the protected and access-restricted areas to the south. Similarly, staff believes that there is the potential for State Parks to provide other low-key and interpretive experiences in the southern part of the Park, and that the five-year transition would allow them to consider these types of opportunities in this area. Again, staff would suggest that the Commission defer to State Parks' master planning processes for uses in this area, but any subsequent allowed uses and intensities of use in this area must be authorized under this, or another, CDP (or a revised PWP).

Third, staff recommends that the Pier Avenue entrance to the Park be closed immediately and the natural dune and bluff conditions restored. Such change is consistent with LCP requirements and allows the community to begin to plan for a

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revitalization of its main coastal street and accessway. After the five-year transition away from OHV use, Oceano would include a beach south of Pier Avenue without vehicles, allowing for the types of opportunities that help other California beach towns to prosper. In fact, there are several planning efforts afoot in Oceano currently towards just this end, and the entrance closure will help to jump start such efforts and assist in their ultimate implementation. In addition, by opening up beach camping between West Grand and Pier Avenues, campers there will be nearer to Pismo Beach, Grover Beach, and Oceano businesses than is currently the case (i.e., near West Grand and Pier Avenues), where those campers are more likely to walk to, visit, and shop, helping to offset at least some concerns that non-OHV businesses along Pier Avenue will be adversely affected by the elimination of OHV uses.

Fourth, and to better address habitat needs, staff recommends that all of the changes identified by the Commission in July 2019, and several that are complementary to them, be adopted immediately to help address coastal resource impacts, even as the Park transitions away from OHV use. These changes include making the 300-acre seasonal plover and least tern habitat enclosure permanent and year-round; extending seasonal habitat fencing to encompass additional areas near the enclosure; incorporating CDFW-recommended fencing around individual plover and tern nests regardless of location; updating predator management protocols, including immediately enclosing trash containers; prohibiting vehicular crossing of Arroyo Grande Creek when it is flowing to the ocean; prohibiting vehicular use at night; accommodating dune restoration in any areas needed to address issues of overuse and/or habitat protection/enhancement, including to address air quality needs; and allowing for protective fencing around sensitive environmental and cultural areas, including authorization for maintenance and upkeep of such fencing in a manner required to have the least impact on coastal resources as possible (e.g., minimizing the use of heavy machinery and grading to the maximum extent feasible).

Finally, staff recommends some basic changes to the CDP to avoid the requirement that the temporary authorization be renewed annually by the Commission, including to reflect the fact that here the Commission would be drawing final conclusions on the CDP under the Coastal Act and the LCPs. Instead, State Parks would annually report to the Executive Director its efforts towards compliance with terms and conditions of the CDP as a means to provide relevant updates, but also to provide State Parks with some management flexibility and some space within which to address the changes identified herein through their processes without a required annual CDP review/renewal. Although there may be some who would suggest that the CDP should continue to be temporary and renewed annually, staff would suggest that this is no longer needed in the way it was required under the prior temporary authorization. Rather, the Commission can continue to retain oversight to ensure State Parks moves forward consistent with the terms and conditions of the updated CDP, while also allowing State Parks the space to properly plan for and make the changes required herein and moving forward to achieve Coastal Act and LCP consistency, including related to further iterations of the PWP.

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Conclusion

As the Commission found when it last reviewed the CDP in July 2019, current Park operations have significant coastal resource impacts and are inconsistent with the Coastal Act and the LCPs. Staff recommends that the Commission adopt the staff-recommended conditions to transition the Park away from OHV use and to accommodate different public access and recreation options and stronger habitat protection protocols. This recommendation would also provide firm direction to State Parks on Coastal Act and LCP requirements as it completes its PWP planning process. Staff believes that the above recommended CDP changes represent an appropriate extension of the Commission's analysis from 2019. And in light of State Parks draft PWP, one that is premised on expanding OHV uses and intensities of use overall at the Park, it is clear that such Commission direction and conclusion is necessary here at this time.

Although some Park users will interpret the staff recommendation to mean that the Park is being "closed," the Park would very much be open as the recommendation is to eliminate OHV use but also to allow other types of lower impact uses at the Park, and ultimately to allow an opportunity for a new and reimagined Park that is open to a variety of less intensive uses. In fact, the Park provides a unique opportunity to realize state, Coastal Act, and LCP goals for a significant state-owned property that is part of one of the most significant and biodiverse dune habitat systems in all the state (including biodiversity goals related the Governor's 2020 Executive Order designed to combat loss of biodiversity and to conserve at least 30% of California's land and coastal waters by 2030). In other words, the Park needs to be celebrated for what it *can* provide, and not for what it can't.

Staff believes that with this recommendation, the Commission can partner with State Parks, the local community, the tribal interests, and visitors to the area to reimagine the uses allowed in the Park that are consistent with the LCPs and the Coastal Act. And staff sees the potential for the Park to become one of State Parks' crown jewels, offering unique experiences (e.g., the Park would continue to allow car camping on the beach, hike-in/bike-in camping, vehicle/ADA access, and similar uses, along with a range of other options, like typical active beach use, equestrian uses to more remote beach and lake experiences, all on thousands of acres of dunes, wetlands, creeks, lakes, and beaches). The Park could continue to be a visitor draw, particularly for families looking for unique lower cost recreational and outdoor opportunities in the central coast and five cities area. In addition, the new Park allows restoration of the dunes, better protecting community air quality and public health.

As described above, Commission staff convened several dozen Zoom sessions with interested parties whose views ranged across the spectrum regarding the issues affecting the Park and staff's recommendation. While some people advocated for allowing vehicular/OHV uses at the Park, and actually expanding them, the majority of the people with whom Commission staff spoke supported the staff recommendation. In particular, local government leaders in the five-cities area saw the potential for the new Park to be an even better economic driver for the region. In fact, when the Park was

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largely closed to vehicles during the past year, it thrived nonetheless, which provides real world evidence to local leaders that OHV use may not be necessary for the Park to attract visitors and to continue to contribute to the local environment and economies.

And finally, staff recognizes that there are many passionate and fervent advocates on all sides of the issues at the Park, and appreciates all that they have contributed to the debate over the four decades of contention related to the CDP. Staff further recognizes that there will be many that do not believe this to be the right decision for the Park. The staff recommendation is, however, based on an analysis of the facts on the ground at the Park, scientific analysis, and what the law requires given those facts and science. Off-roading enthusiasts will continue to be able to ride at eight other inland State Parks that allow vehicular recreation, and covering nearly 150,000 acres (over 225 square miles), as well as at nearly 70 other public OHV areas in California. However, staff does not believe that these OHV uses can be found consistent with applicable LCP and Coastal Act requirements here. In making this recommendation, staff is hopeful that that the Commission provides the finality that is needed here and that the Park continues to be a celebrated public asset, and a dynamic and unique coastal Park for the five cities area and visitors to it for many, many years to come.

The recommended conditions are found on pages 22 through 26 of this report, and the motion to implement staff's recommendation is found on page 22.