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Prepared June 21, 2019 for July 11, 2019 Hearing

To: Commissioners and Interested Persons

From: Dan Carl, Central Coast District Director
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**Subject: Oceano Dunes State Vehicular Recreation Area Coastal Development
Permit 4-82-300 Review**

SUMMARY OF STAFF RECOMMENDATION

Oceano Dunes State Vehicular Recreation Area (ODSVRA) is an off-highway vehicle (OHV) park that is located on the central California coast seaward of the community of Oceano in southern San Luis Obispo County. The Park is nearly 3,600 acres that extends along 6 miles of sandy beach and roughly 3 miles inland at its widest point through a significant sand dune system. Street legal vehicles are allowed access to the entire lower beach, and OHVs are allowed along roughly 3.5 miles of beach and in about 1,500 dune acres total (or over 2 square miles) of the Park. ODSVRA is operated by the California Department of Parks and Recreation's (State Parks, or DPR) Off-Highway Motor Vehicle Recreation Division, and it is the only OHV park in the State's entire coastal zone.

As the only California coastal park to allow vehicles to drive on dunes and beach sand, ODSVRA provides a unique public recreational access opportunity, and it is very popular for RV camping as part of the OHV experience. However, these same sandy resources that make the Park attractive for these vehicular uses also constitute significant natural resources in the coastal zone, and the entirety of ODSVRA has been designated as an environmentally sensitive habitat area (ESHA) by the Coastal Commission, including in the San Luis Obispo County certified Local Coastal Program (LCP). In fact, ODSVRA is part of a larger sensitive ecological system, the Nipomo-Guadalupe dunes complex, that spans San Luis Obispo and Santa Barbara Counties. As a result, there has historically been a great tension over how to strike an appropriate balance between providing for vehicular recreation and protecting dune and related coastal resources.

Since its inception the Coastal Commission has been an active partner with State Parks, San Luis Obispo County, and other interested parties in addressing these competing interests, including both through the County's original LCP certification process in the 1980s as well as the coastal permitting process. It is the latter process that gives rise to this review. Specifically, in 1982, and because San Luis Obispo County at the time was proposing LCP policies that would have

prohibited OHV activity within ODSVRA, State Parks submitted an application for and the Commission approved coastal development permit (CDP) 4-82-300 to define basic operational parameters for the Park (most of which were purposefully only authorized temporarily and on an interim basis),¹ and to set in motion a series of requirements to help resolve issues regarding the appropriate location and intensity of vehicular use at ODSVRA. These requirements were never fulfilled.² Rather, in the time since that original approval, the Commission has attempted to resolve these issues through a series of CDP amendments, as well as CDP-required annual reviews (that have been a part of the CDP's requirements since the early 1980s) that are intended to identify whether the interim intensity of vehicular use, both street-legal vehicles and OHVs, is occurring in a manner that adequately protects ESHA and other coastal resources. If not, the CDP authorizes the Commission to make changes to ODSVRA operational parameters through the annual re-review process to ensure protection of coastal resources.³ In short, the CDP authorized and authorizes ongoing ODSVRA use parameters and intensities on an interim and temporary basis, and provides the Commission an annual CDP re-review vehicle for evaluating management measures at ODSVRA relating to said use and for making changes to CDP terms and conditions if needed to ensure coastal resource protection through the CDP.

Although the Commission has to date used its discretion (through amendments to the base CDP and through the annual review process) to allow ODSVRA use parameters, intensities, and activities to continue based on these temporary and interim use parameters (as adjusted through CDP amendments) as they relate to coastal resource impacts for decades, it has become clear to staff that the coastal resource issues and constraints affecting vehicular operations at the Park are only becoming more acute, and have reached a point where it is simply not appropriate for the Commission to continue to allow for use to continue as it has in the past, as this would not be consistent with underlying permit conditions and coastal resource protection parameters, interpretation of which must be consistent with the Coastal Act and LCP. In fact, fundamental coastal resource issues and constraints related to LCP compliance, air quality and public health, rare and endangered species and habitats, environmental justice, and tribal concerns, all point to the need for the Commission to exercise the discretion provided to it by the CDP and to modify its outdated interim operational and management parameters as part of this CDP re-review to better resolve the significant coastal resource problems associated with ongoing OHV uses at ODSVRA in light of current conditions. The bottom line in staff's view is that the Park and the CDP cannot continue to operate as it has in the past, and that the range of coastal resource issues

¹ For example, the CDP authorized interim Park entrances (including the construction of two interim kiosks at the two interim entry points), designated an interim OHV staging area (for off-loading of OHVs in the Park), and identified interim use limits.

² And staff notes that there are a variety of alleged violations associated with activities at ODSVRA, including with respect to failure to satisfy requirements to finalize interim access/use parameters, and it is undisputed that there are open violation cases related to some of these activities. Thus, consistent with advice from both the State Attorney General and the Coastal Commission Chief Counsel (see memos dated June 20, 2014 and August 1, 2014, respectfully), Commissioners should not engage in any ex parte communications related to those alleged violations.

³ Although unusual, this CDP construct is based on the fact that the original allowed use parameters were intended to be temporary, and intended to be finalized and resolved within the first few years of the original CDP approval. In other words, the original CDP was never intended to codify use intensities permanently, but rather was intended to 'sunset' (and allow the Commission to modify use intensities unilaterally) if the measures designed to lead to final use intensities were not realized, which they were not and never have been. Subsequent CDP amendments have modified the parameters of the annual review, but they have not changed this fundamental CDP construct.

and constraints affecting ODSVRA together suggest that it is time to start thinking about ways to transition the Park away from high-intensity OHV use to other less intensive forms of public access and recreation. It is also clear that it is appropriate for the Commission to provide explicit direction to State Parks on these points, including so they can take the Commission's perspective into account as they move forward at ODSVRA, including through their ongoing Public Works Plan (PWP) efforts, where State Parks intends for the PWP to be the vehicle to replace the base CDP and to guide future ODSVRA operations under the Coastal Act and the LCP.

Thus, herein staff recommends that the Commission make a series of changes to the CDP terms and conditions affecting Park operations to begin to better address coastal resource concerns under the CDP, including adding conditions to effectuate the following:

- **Increase Predator Management.** Implement an improved predator management plan, including enclosures for trash and food waste, and BMPs for addressing predation of sensitive species (including by coyotes, raccoons, skunks, opossums, ravens, gulls, owls, and peregrine falcons).
- **Increase Operational Enforcement.** Increase enforcement of all vehicular use limits, all vehicular speed limits, and all other vehicular requirements, including through additional signs, rangers, and parameters for verifying that the number of vehicles in the Park does not exceed maximum allowances.
- **Add Fencing.** Install additional fencing in specific areas to better protect coastal resources (including fencing in the south Oso Flaco Lake area, fencing suitable for enhanced predator management, fencing to better define the southern enclosure, and fencing to ensure all vegetated dune areas are appropriately fenced off).
- **Enhance Public Outreach.** Institute a public outreach program to increase use of appropriate beach and dune areas by lower-income, youth, and tribal parties.
- **Eliminate the TRT and Implement Annual Reports.** Eliminate the Technical Review Team (TRT) and replace it with an annual reporting program that is processed through Executive Director review and approval.
- **Add Special Events Protocols.** Require a separate CDP for all special events that could result in adverse impacts to coastal resources, including music festivals, concerts, OHV events (e.g., Huckfest), and any other special events that propose an intensity of use beyond those specified in the CDP.
- **Prohibit Night Riding.** Prohibit vehicular and OHV activity during nighttime hours (i.e., from one-hour after sunset and to one-hour before sunrise).
- **Prohibit Arroyo Grande Creek Crossing.** Prohibit vehicular crossings of Arroyo Grande Creek when it flows (i.e., shut down all OHV and camping operations during this time) except for emergency vehicles, and monitor the creek to ensure that users are not allowed south of the Creek when it will soon connect to the ocean and to provide time for users south of the Creek to exit before it connects to the ocean.

- **Reduce Use Limits.** Reduce interim vehicular and OHV daily use limits to an amount proportionate to the acreage that has been removed from vehicular/OHV use (e.g., due to dust control requirements, other exclusions, etc.).
- **Eliminate Exceptions to Use Limits.** Eliminate the four exceptions that allow unlimited vehicular and OHV use on Memorial Day, Fourth of July, Labor Day, and Thanksgiving weekends.
- **Evaluate Entrance Modifications.** Evaluate changes that can be made to provide vehicular access into the Park in way that can reduce coastal resource impacts, particularly as such vehicular access relates to Arroyo Grande Creek crossings and more normal and typical beach uses north of the riding area.
- **Make Seasonal Exclusion Permanent.** Make the roughly 300-acre seasonal endangered species exclusion area permanent, and restore the area to enhance habitat.
- **Allow for Future Closures for Required Dust Control.** Allow perimeter fencing and/or vegetation and related development (e.g., monitoring equipment, etc.) for dust control purposes for all areas specified by the San Luis Obispo County Air Pollution Control District.

Staff believes that these changes will help to begin to better address identified coastal resource issues, constraints, and problems than does the current outdated interim operational and management standards specified under the CDP. Some will argue that these changes go too far and unduly restrict OHV use, and that such use should actually be expanded. Others will argue that they don't go far enough, and that OHV use should be prohibited altogether here. Staff believes that it is appropriate to start to make these kinds of changes, and to start to plan for ODSVRA to transition to other less intensive uses, but that overall transition will necessarily take time. In other words, staff believes that these changes meaningfully improve CDP compliance, as informed by Coastal Act/LCP consistency as well as the authority and requirements specified in the CDP itself, but themselves should still be understood as short-term/interim solutions.

In fact, in addition to these CDP changes, staff also believes it to be appropriate and timely for the Commission to provide direction to State Parks moving forward regarding overall Coastal Act, LCP, and CDP compliance, including so that State Parks has the benefit of the Commission's direction moving forward as they determine the changes that they need to undertake at ODSVRA to comply with Coastal Act requirements. Such direction is particularly important right now given that State Parks is currently in the process of preparing a Public Works Plan to guide future ODSVRA operations, and State Parks envisions that PWP as essentially taking the place of the Commission's current CDP. The PWP has been framed by State Parks as a vehicle to address ongoing coastal resource issues and constraints associated with Park use, and has been conceptualized by State Parks as taking a fresh look at Park operations in light of such current realities and legal requirements. Recent draft PWP materials indicate to Commission staff that that effort does not appear to be proposing operational or management changes that ensure consistency with the LCP and the Coastal Act, and thus the Commission's input is even more critical at this juncture to ensure that any ultimate PWP

developed can be found consistent with the LCP and Coastal Act. Thus, in addition to the recommended CDP changes described above, staff also believes that the Commission should send a letter to State Parks that summarizes the issues, constraints, and recommended next steps as identified in this report (see **Exhibit 13**), and will seek Commission concurrence on that point at the July hearing.

In short, the status quo at ODSVRA is clearly not sustainable and it is time to more fully understand and evaluate other public access and recreation options that are consistent with coastal resource protections given the current realities that affect and are affected by OHV activities at this shoreline location. Put simply, in staff's view a Park that is fully consistent with on-the-ground realities, and with coastal resource protection requirements, does not include OHV use. Rather, it is clear to staff that the significant coastal resource issues and constraints attributable to OHV use render long-term OHV use at this location untenable. Granted, current vehicular and OHV users will no doubt suggest that is exactly the manner in which State Parks should proceed, but to do so is to suggest that State Parks should simply disregard the realities affecting this Park, and to suggest that those realities are somehow inconsequential. In staff's view they are not, and staff firmly believes that they are not inconsequential to State Parks either. It is not a single issue that is leading to this conclusion, rather it is the myriad of significant and overlapping coastal resource issues, as described in this report, that are compounding and that together serve to constrain what can and should happen in this Park going forward consistent with Coastal Act and LCP requirements. In staff's view what is appropriate development within the coastal zone necessarily changes and evolves over time, including with advancing scientific knowledge regarding impacts to sensitive habitats, species and other coastal resources. OHV use in ESHA, and the amount of problems engendered by it, is not an appropriate use in this setting in light of the serious Coastal Act and LCP coastal resource issues and constraints identified herein.

Staff has been discussing all of these very issues with State Parks staff, including in similar detail as provided in this staff report, for the past several months, including through meetings in both Santa Cruz and Sacramento. Although there have been some differences of opinion, the discussions have always been respectful. And they have been forward-looking. For example, there are clearly a range of options that State Parks could consider moving forward that can appropriately respond to the significant coastal resource issues and constraints affecting continuing OHV operations at ODSVRA. There are those who would suggest that State Parks eliminate vehicular use in the dunes at ODSVRA as one potential solution. It is clear that that would be a fair conclusion in order to protect coastal resources based on the evidence. At the same time, it is also clear that there may be other options that would make sense for both State Parks and the public, including updates to ODSVRA operations and management that might retain some non-OHV vehicular use, not only based on its designation as a State Vehicular Recreation Area, but also based on the Park's history in providing for and accommodating other forms of vehicular use that don't have the same level of adverse impact on coastal resources as OHV use. For example, street-legal vehicle camping on a limited portion of the beach may be able to provide a unique, lower-cost, overnight coastal camping opportunity that ties into the history of ODSVRA and continues its rich camping tradition, but with a significantly reduced impact on sensitive coastal resources and surrounding communities. If properly designed, it could not only retain a unique lower-cost public access offering in coastal California, but it could

ODSVRA Review

also allow for safe coastal access for residents and visitors that would have the added benefit of greater compatibility with the town of Oceano, including being more closely aligned with its healthy growth and related economic development. Again, there are clearly a range of possibilities that could be considered for ODSVRA moving forward, including undoubtedly others different from these, and staff *very much* welcomes the opportunity to engage with State Parks, other interested parties, and the community in an effort to develop a truly new and sustainable vision for the Park and surrounding area for the future that fully comports with Coastal Act and LCP coastal resource protection requirements.

In conclusion, this CDP review documents the myriad of serious coastal resource constraints and issues implicated by the outdated interim OHV operational and management parameters at ODSVRA, and offers paths for resolution, both in the immediate term and in the longer term. It is time for significant change regarding OHV use at ODSVRA – good coastal resource planning and public policy as reflected in the Coastal Act and LCP dictate as much – and staff’s recommendation included herein is intended for the Commission to take action to help move the issues forward in a meaningful way. The motion to implement the staff recommendation is found at the top of page 8.

TABLE OF CONTENTS

I. STAFF RECOMMENDATION	8
A. STAFF-RECOMMENDED MOTION AND RESOLUTION.....	8
B. STAFF-RECOMMENDED ADDITIONAL CDP SPECIAL CONDITIONS	8
II. ODSVRA CDP BACKGROUND	13
A. ODSVRA LOCATION AND DESCRIPTION.....	13
B. CDP AND LCP HISTORY	15
III. ODSVRA CDP ANNUAL REVIEW.....	18
A. CDP 4-82-300 COMPLIANCE ISSUES.....	19
B. LCP COMPLIANCE ISSUES.....	26
C. AIR QUALITY ISSUES	34
D. RARE AND ENDANGERED SPECIES AND HABITAT ISSUES.....	41
E. ENVIRONMENTAL JUSTICE AND TRIBAL ISSUES	54
F. PWP STATUS AND PROPOSED PROJECT ISSUES.....	56
G. VIOLATION ISSUES.....	57
H. COMMISSION-REQUIRED CHANGES AND NEXT STEPS.....	58

APPENDICES

Appendix A: Substantive File Documents

Appendix B: Staff Contact with Other Agencies and Groups

EXHIBITS

Exhibit 1: ODSVRA Location Map

Exhibit 2: ODSVRA Maps and Figures

Exhibit 3: ODSVRA Photos

Exhibit 4: CDP 4-82-300 Conditions (as amended through 4-82-300-A5)

Exhibit 5: Commission Staff La Grande Property Comments

Exhibit 6: San Luis Obispo County LCP ODSVRA-Related Policies

Exhibit 7: San Luis Obispo County Air Pollution Control District (APCD) Rule 1001

Exhibit 8: Resource Agency Comments (USFWS, CDFW, NOAA Fisheries)

Exhibit 9: Commission Staff Comments Regarding the PWP NOP

Exhibit 10: Commission Staff Comments Regarding the HCP NOP

Exhibit 11: Commission Staff Ecologist Dr. Laurie Koteen ESHA Memorandum

Exhibit 12: State Parks PWP Oso Flaco Lake Campground and OHV Accessway Project

Exhibit 13: Letter From the Commission to State Parks Regarding ODSVRA’s Future

I. STAFF RECOMMENDATION

A. STAFF-RECOMMENDED MOTION AND RESOLUTION

Staff recommends that the Commission, after public hearing, **approve** the following changes to CDP 4-82-300 as amended. To implement this recommendation, staff recommends a **yes** vote on the following motion. Passage of this motion will result in approval of the CDP changes and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

***Motion to Approve Changes:** I move that the Commission approve the changes to coastal development permit number 4-82-300 as amended as set forth in the staff recommendation, and I recommend a yes vote.*

***Resolution to Approve changes:** The Commission hereby approves the changes to coastal development permit number 4-82-300 as amended and adopts the findings set forth below on grounds that the changes are necessary to maintain compliance with the terms and conditions of coastal development permit 4-82-300 as amended. Approval of the changes complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

B. STAFF-RECOMMENDED ADDITIONAL CDP SPECIAL CONDITIONS

The following conditions are hereby added to CDP 4-82-300:

- 1. Predator Management Plan.** By October 31, 2019, the Permittee shall submit for Executive Director review and approval a Predator Management Plan. The Plan shall be prepared by a resource ecologist (or ecologists) with experience with sensitive species and predation issues, shall be based on consultation with USFWS, and shall identify the measures to be implemented to protect sensitive species (including Western snowy plover and California least tern) from predation, including by coyotes, raccoons, skunks, opossums, ravens, gulls, owls, and peregrine falcons. At a minimum, the Plan shall identify measures to better manage trash and food waste enclosures, and BMPs to better address predation of sensitive species, including in terms of fencing surrounding all vegetated dunes suitable for predator management. The Permittee shall immediately implement the Predator Management Plan upon Executive Director approval.
- 2. Vehicular Enforcement Plan.** By October 31, 2019, the Permittee shall submit for Executive Director review and approval a Vehicular Enforcement Plan. The Plan shall identify the measures to be taken to comply with and actively enforce all CDP ODSVRA vehicular use limits, all vehicular speed limits, and all other vehicular requirements associated with the CDP, including through additional signs, rangers, and parameters for verifying that the number of vehicles in the Park do not exceed maximum allowances. The

Permittee shall immediately implement the Vehicular Enforcement Plan upon Executive Director approval.

- 3. Fencing Augmentation and Enhancement Plan.** By October 31, 2019, the Permittee shall submit for Executive Director review and approval a Fencing Augmentation and Enhancement Plan. The Plan shall identify additional fencing to be installed to better protect coastal resources (including additional fencing in the South Oso Flaco Lake area, fencing suitable for enhanced predator management, fencing to better define the southern enclosure, and fencing to ensure all vegetated dune areas are appropriately fenced off). The Permittee shall immediately implement the Fencing Augmentation and Enhancement Plan upon Executive Director approval.
- 4. Public Outreach Plan.** By October 31, 2019, the Permittee shall submit for Executive Director review and approval a Public Outreach Plan. The Plan shall be designed with the goal to maximize use of appropriate beach and dune areas by lower-income, youth, and tribal parties, where such Plan shall identify all measures and venues to be used to advertise and increase awareness of such available uses (e.g., ODSVRA website, press release, calendar listings, ads on radio, print ads, social media (including Facebook, Twitter, and Instagram), etc.). The Plan shall be designed to reach as many potential lower-income, youth, and tribal audiences as possible, including audiences that might not normally be reached through traditional and local means (e.g., inland communities). The Permittee shall immediately implement the Public Outreach Plan upon Executive Director approval.
- 5. Monitoring Program.** All CDP requirements associated with the Technical Review Team (TRT) shall be deleted, and the role and responsibilities currently attributable to the TRT shall instead be incorporated into a Monitoring Program that will be used by the Permittee to monitor Park use and management under the CDP, where the information collected pursuant to such monitoring will be provided to the Commission annually. By December 31, 2019, the Permittee shall submit for Executive Director review and approval the Monitoring Program. The Program shall describe the structure, content, and methods for ongoing monitoring of public access and recreational uses, including vehicular recreation (accounting for attendance numbers, special events, and user types, etc.), and of dune resources, dune vegetation, and creek and wetlands resources (including but not limited to Arroyo Grande Creek) as well as sensitive species resources. The Program shall be sufficiently detailed to identify the data and information that must be collected to document the effectiveness of Park management activities in protecting the aforementioned dune and other coastal resources (including evaluating vehicular recreation and coastal resource trends, impacts, and issues facing Park operations), and to support recommendations for changes to Park management to better address any identified impacts. The Program shall provide for the submittal of annual monitoring reports to the Executive Director for review and approval, where each monitoring report shall include recommendations for changes to operational and management parameters under the CDP to better protect coastal resources, which shall be implemented as directed by the Executive Director's approval of the report if the Executive Director: (a) determines that no amendment is legally required to implement the changes; (b) deems the changes reasonable and necessary; and (c) determines that the changes do not adversely impact coastal resources. In any case, the Executive Director shall also have the discretion to

schedule any particular monitoring report for a Coastal Commission hearing where the Commission will be asked to concur with the Executive Director's report approval and/or to make changes to operational parameters under the CDP otherwise to better protect coastal resources. The Permittee shall immediately implement the Monitoring Program upon Executive Director approval, and the first monitoring report shall be due to the Executive Director no later than July 31, 2020, with subsequent year's annual monitoring reports also due on July 31st.

- 6. Special Events Protocol.** By October 31, 2019, the Permittee shall submit for Executive Director review and approval a Special Events Protocol. The Protocol shall specify that a separate CDP shall be required for all special events that could result in adverse impacts to coastal resources (including music festivals, concerts, OHV events (e.g., Huckfest), and any other special events that propose an intensity of use beyond those specified in the CDP), and shall provide a methodology for identifying, evaluating, mitigating (for projected coastal resource impacts), and permitting of any proposed special events. The Permittee shall immediately implement the Special Events Protocol upon Executive Director approval.
- 7. Nighttime Vehicular Use Prohibited.** All vehicular and OHV activity within ODSVRA shall be prohibited during nighttime hours (i.e., from one-hour after sunset and to one-hour before sunrise), which restriction shall be a component of the Vehicular Enforcement Plan (see Special Condition 2 above).
- 8. Arroyo Grande Creek Crossing Plan.** Vehicular crossings through Arroyo Grande Creek shall be prohibited, except for emergency vehicles, and all OHV and camping operations shall cease when the creek flows to the ocean. The Permittee shall regularly monitor the creek so as to ensure that users are not allowed to the southern side of the creek area when the creek may soon connect to the ocean, and so as to provide time for users then south of the creek area to exit the Park before it will connect to the ocean. By October 31, 2019, the Permittee shall submit for Executive Director review and approval an Arroyo Grande Creek Crossing Plan that shall identify all measures to be taken to maintain consistency with this condition, including any materials to be provided to Park users, signs near the creek, and protocols for ensuring that there are no creek crossings under the conditions specified above, which restrictions shall be a component of the Vehicular Enforcement Plan (see Special Condition 2 above). The Permittee shall immediately implement the Arroyo Grande Creek Crossing Plan upon Executive Director approval.
- 9. Updated Interim Use Limits.** Interim OHV, street-legal vehicle, and camping daily use limits shall be reduced an amount proportionate to acreage that has been removed from vehicular/OHV use (e.g., due to dust control requirements, other exclosures, etc.), including as future areas are taken offline. As of July 11, 2019, 1,048 acres are authorized for OHV and camping use, and interim use limits are as follows: (a) 1,806 street-legal vehicles per day; 700 camping units per night; and (c) 1,204 OHVs per day. A street-legal vehicle that also stays overnight counts as both a street-legal vehicle and as a camping unit. These restrictions shall be a component of the Vehicular Enforcement Plan (see Special Condition 2 above).
- 10. No Interim Use Limit Exceptions.** The four exceptions (specified in Special Condition 3d of the fifth amendment to the CDP) that allow unlimited vehicular and OHV use on

Memorial Day, Fourth of July, Labor Day, and Thanksgiving weekends and related days shall be eliminated, and interim OHV, street-legal vehicle, and camping use limits (see Special Condition 9 above) shall apply 365 days per year. These restrictions shall be a component of the Vehicular Enforcement Plan (see Special Condition 2 above).

- 11. Entrance Study.** By December 31, 2019, the Permittee shall submit for Executive Director review and approval an Entrance Study. The Study shall evaluate changes that can be made to provide vehicular access into the Park in a manner that will reduce coastal resource impacts relative to the existing interim entrances, particularly as it relates Arroyo Grande Creek crossings and more normal and typical beach uses north of the riding area. The Study may be based upon Permittee’s past analyses (i.e., including the ‘2006 Alternative Access Study Oceano Dunes State Vehicular Recreation Area’ produced by Condor Environmental Planning Services, Inc.), but shall be updated as necessary to reflect any pertinent new information (including with respect to habitat protections for sensitive species) that may affect its evaluations and/or conclusions. The purpose of the Study is to identify a preferred entrance system for the Park, including through analysis of the environmental impacts and benefits (including with respect to dunes, habitats, creeks, beaches, neighborhoods, and community character) and feasibility associated with alternative entrances, including evaluating options across the same set of analysis factors and levels of detail. The Executive Director will agendaize Commission consideration of the Entrance Study at the next annual CDP review, when the Commission may require changes to Park entrances in consideration of the Study and any other relevant information.
- 12. Permanent Southern Enclosure.** The roughly 300-acre seasonal ESA vehicular enclosure area (see **Exhibit 2**) shall permanently exclude vehicles, and such area shall be restored as needed to enhance habitat values consistent with allowed passive public access use. By October 31, 2019, the Permittee shall submit for Executive Director review and approval a Permanent Enclosure Plan. The Plan shall be prepared by a resource ecologist (or ecologists) with experience with sensitive species, shall be based on consultation with USFWS, and shall identify the measures to be implemented to make the seasonal enclosure permanent and to restore the area as needed to enhance habitat values for sensitive species (including Western snowy plover and California least tern) consistent with allowed passive public access use. The Permittee shall immediately implement the Permanent Enclosure Plan upon Executive Director approval.
- 13. Authorize Dust Control Areas.** This CDP authorizes State Parks to implement specified airborne particulate matter emission (“dust”) control and related monitoring measures at ODSVRA in order to reduce and control dust generated at ODSVRA consistent with the requirements of San Luis Obispo County Air Pollution Control District (APCD) and the California Air Resources Board (CARB) subject to all of the following:

 - a. Dust Control Measures.** Approved dust control measures include planting native dune vegetation, installing wind fencing, installing porous roughness elements, installing perimeter fencing (around emissive ‘hot spots’), installing ‘track out’ devices at the Pier Avenue and West Grand Avenue entrances to ODSVRA, and installing native trees inland of ODSVRA. Soil stabilizers and straw bales shall only be utilized when the

Executive Director determines that the proposed soil stabilizers and/or straw bales will be utilized in an amount, configuration, and composition that will not significantly disrupt dune habitat values (no significant degradation of dune habitats and/or vegetation; use to be kept to the minimum amount necessary to abate dust).

- b. Monitoring Measures.** Air quality monitoring stations consistent with APCD and/or CARB requirements that are sited and designed to limit any associated coastal resource impacts as much as possible.
- c. Dust Control and Monitoring Area.** Approved dust control and monitoring measures are to be located in the areas specified (by APCD and/or CARB) as necessary to meet APCD and/or CARB requirements, subject to concurrence by the Executive Director. In addition, track out devices are to be located at Pier and West Grand Avenues, but shall only be allowed within the existing paved street areas and shall not be allowed on the beach sand. Further, native trees shall only be planted where the Permittee has provided property owner consent for same, and where the Executive Director determines that the proposed native trees will be planted in an amount, configuration, and species type that will not have significant adverse effects on coastal resources (no obstruction of any public coastal views; no significant degradation of dune vegetation and habitat; no loss of prime agricultural lands or lands used for agricultural production).
- d. Dust Control Measures Coverage.** Dust control measures approved pursuant to this CDP are expected to result in planting/maintaining approximately 350 acres. Authority for State Parks to implement the approved dust control and related monitoring measures at any given location is subject to the requirement that State Parks has landowner approval to undertake development on that property.
- e. APCD and CARB Requirements.** Notwithstanding subsections (a) through (d) above, any dust control measures implemented under this CDP shall be consistent with any applicable requirements of APCD and CARB related to dust control at ODSVRA.

Prior to implementing any of the approved dust control and monitoring measures, the Permittee shall submit, for Executive Director review and approval, a Dust Control Work Plan that clearly describes the dust control and monitoring measures to be implemented, where the Dust Control Work Plan shall be submitted with evidence that APCD and CARB have reviewed the measures and consider them consistent with their requirements related to dust control at ODSVRA. Each Dust Control Work Plan submitted by the Permittee shall include a description of the previous dust control and monitoring measures undertaken, including monitoring data identifying effectiveness, including the effectiveness and success of dune revegetation, and any coastal resource impacts. The Executive Director shall review each Dust Control Work Plan to ensure consistency with the terms and conditions of this CDP, including with respect to the protection of coastal resources. The Permittee shall immediately implement the Dust Control Work Plan upon Executive Director approval.

- 14. Indemnification by State Parks/Liability for Costs and Attorneys' Fees.** State Parks agrees to reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys' fees (including (1) those charged by the Office of the Attorney General, and (2)

any court costs and attorneys' fees that the Coastal Commission may be required by a court to pay) that the Coastal Commission incurs in connection with the defense of any action brought by a party other than State Parks against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval of these CDP changes. The Coastal Commission retains complete authority to conduct and direct the Commission's defense of any such action against the Coastal Commission, its officers, employees, agents, successors and assigns.

- 15. Special Condition Conflicts.** In case of any conflict between these special conditions (i.e., Special Conditions 1 through 15 as approved by the Coastal Commission on July 11, 2019) and other CDP 4-82-300 special conditions (see Exhibit 4), these special conditions (Special Conditions 1 through 15) shall take precedence.

II. ODSVRA CDP BACKGROUND

A. ODSVRA LOCATION AND DESCRIPTION

Oceano Dunes State Vehicular Recreation Area (ODSVRA) is state-designated State Vehicular Recreation Area that is located on the central California coast seaward of the community of Oceano in southern San Luis Obispo County (see **Exhibit 1**). The Park is nearly 3,600 acres that extends along 6 miles of sandy beach and roughly 3 miles inland at its widest point through significant sand dune areas. Street legal vehicles are allowed access to the entire lower beach, and OHVs are allowed along roughly 3.5 miles of beach and in about 1,500 dune acres total (or over 2 square miles) of the Park. ODSVRA is mostly owned and entirely operated by the California Department of Parks and Recreation's (State Parks, or DPR) Off-Highway Motor Vehicle Division, and it is the only State Vehicular Recreation Area in the California coastal zone.

ODSVRA is part of the much larger 18-mile-long Guadalupe-Nipomo dunes complex that extends from San Luis Obispo south into northern Santa Barbara County. The cities of Pismo Beach and Grover Beach form the northern border of the Park. Inland and to the east are the Phillips 66 Refinery (formerly ConocoPhillips Refinery), the unincorporated community of Oceano, and private lands that consist mainly of dunes, coastal scrub, and agricultural fields. The southern border of the Park abuts the Guadalupe-Nipomo Dunes National Wildlife Refuge.

As the only California coastal state park to allow vehicles to drive on dunes and beach sand, ODSVRA provides a unique public recreational access opportunity, and it is very popular for RV camping as part of the OHV experience, with annual attendance in the millions and annual vehicular use in the hundreds of thousands.⁴ However, these same sandy beach and dune resources that make the Park attractive for these vehicular uses also means that the Park contains significant and sensitive natural resources, and the entirety of it has been designated and affirmed

⁴ DPR's numbers from 2013 show that the Park was visited by an estimated 1.6 million persons, and that it was accessed by some 264,042 street-legal vehicles and 142,376 off-highway vehicles (over 400,000 vehicles in total).

as an environmentally sensitive habitat area (ESHA) by the Coastal Commission,⁵ including in certification of the San Luis Obispo County Local Coastal Program (LCP). In fact, ODSVRA is part of a significant and sensitive ecological system, the Guadalupe-Nipomo dunes complex, and the area includes critical habitat for the threatened western snowy plover, and supports other sensitive species including the endangered California least tern, endangered tidewater goby, and threatened steelhead trout. As a result, there has historically been a great tension over how to strike an appropriate balance between providing for vehicular recreation and protecting dune and related coastal resources consistent with CDP, Coastal Act, and LCP requirements.

There are two interim⁶ vehicular entry points for ODSVRA. The northernmost entrance (and the northern boundary for allowed vehicular use of any kind on the beach) is at West Grand Avenue within the City of Grover Beach (see **Exhibit 2**). The second entrance is located about one-mile south of West Grand Avenue at Pier Avenue within the unincorporated community of Oceano. From both entry points, street-legal vehicles then drive approximately two miles south along the lower beach towards the interim⁷ OHV staging and allowed riding areas (see staging and riding areas noted on **Exhibit 2**). In order to get to the OHV staging and riding areas, vehicles must cross Arroyo Grande Creek where it empties into the Pacific Ocean, approximately one-half mile south of Pier Avenue. Arroyo Grande Creek is a perennial stream that supports Steelhead trout and Tidewater goby, both of which are listed species under the Federal Endangered Species Act (ESA).⁸ Typically, the only time the Creek has significant flows across the beach is during the rainy season. Other times of the year, it tends to terminate in a lagoon inland of the immediate shoreline. However, when it is flowing, the Creek presents an obstacle to vehicular travel, including to get to the OHV riding and staging areas to the south, and has been the site of coastal resource problems in this respect as vehicles attempt to navigate through and across the flowing Creek to access ODSVRA riding and camping areas further south.

Continuing south, vehicles reach the above-described interim OHV staging area, which is one-half mile south of Arroyo Grande Creek at Post 2⁹ (see location of marker posts in **Exhibit 2**). This staging area is the designated area where OHVs that have been trailered in by other vehicles are first allowed to be off-loaded and ridden. OHVs may be off-loaded in other areas south of the staging area, but the staging area at Post 2 is the location where OHV use is first allowed as one

⁵ See Coastal Commission Staff Ecologist, Dr. Laurie Koteen's, memo on this point in Exhibit 11.

⁶ When the Commission approved CDP 4-82-300 in 1982, it designated temporary and interim entrance locations, and required that DPR study and the Commission approve a permanent entrance system no later than 18 months after certification of the County's Land Use Plan (LUP, which was certified in 1984), in part to allow consideration of potential alternatives for vehicular access for the Park to avoid adverse coastal resource impacts (see Special Condition 1(b) in Exhibit 4). Although DPR has studied alternatives in the past, the Commission has never taken action to finalize Park access and staging through the CDP and the LCP as required. As such, there have been repeated complaints about the temporary and interim nature of the existing system and its impacts (e.g., to non-vehicular recreational beach use and to Arroyo Grande Creek habitat resources), and this continues to be an over three-decade old issue and violation of the CDP. See also violation finding below.

⁷ Id (the staging areas are also temporary and interim in the same way as the entrances are temporary and interim under CDP 4-82-300).

⁸ South Central Coast steelhead trout are listed as threatened, and tidewater goby are listed as endangered.

⁹ The marker posts are located approximately one-half mile apart and are used as riding reference points within ODSVRA.

heads south from the interim entrance points. OHV riding is allowed in most of the Park area south of the staging area (the OHV riding area extends along roughly 3.5 miles of the immediate shoreline, and extends approximately 2 miles inland in the dunes), much of which is accessed via the ‘sand highway’,¹⁰ and street-legal vehicles can range essentially along the entire 6-mile stretch of the ODSVRA. Included in the riding area between approximately Post 4 and Post 7 is the La Grande property (see **Exhibit 2**). The La Grande property occupies 584 acres of the Park (or about 40% of the overall riding area), and this area is almost entirely owned by San Luis Obispo County.¹¹ Although at one time DPR leased this area from the County on a month-to-month basis, there is no lease or other arrangement for State Parks to use the La Grande property at the current time.

A portion of the ODSVRA riding area is closed to OHV use for 7 months out of the year for habitat purposes. Specifically, DPR installs and maintains fencing restricting OHV use to protect nesting California least terns and western snowy plovers (both of which are ESA-listed species)¹² along the southernmost portion of the riding area along the shoreline and covering an area of approximately 300 acres from March 1st to September 30th each year. This seasonal nesting enclosure area is referred to as the southern enclosure (see **Exhibit 2**). Approximately 250 acres of the enclosure is within an area that is otherwise open to OHV use the other 5 months of the year, extending from approximately Post 6 south to Post 8 to the Oso Flaco Lake area. Although the basic configuration of the seasonal southern enclosure has remained relatively consistent since 2004, changes in dune topography and public safety issues impact the placement of the inland fence, resulting in small variations in acreage from year to year.

Just south of the southern enclosure area and the open riding area is the Oso Flaco Lake area (see **Exhibit 2**). The Oso Flaco Lake area was historically open to riding, but was closed off to OHV use by the Coastal Commission due to severe resource degradation through CDP 4-82-300 in 1982. This area now supports a healthy system of distinct habitats, including freshwater lakes and marsh, a significant riparian system, dune vegetation, and coastal sage scrub. A pedestrian-only access point to the Oso Flaco Lake area is located at the end of Oso Flaco Lake Road.

See site location maps, ODSVRA maps and figures, and photos of the ODSVRA area in **Exhibits 1, 2, and 3** respectively. In addition, DPR also provides access to an interactive virtual tour of the site that is available at <http://www.regal360.com/clients/ohv/index.html>.

B. CDP AND LCP HISTORY

The San Luis Obispo County Local Coastal Program (LCP) Land Use Plan (LUP) was originally adopted by the County in 1981. At that time, the County’s LUP proposed to close the entire Park

¹⁰ The ‘sand highway’ is a series of marker posts that head inland from the beach to the backdune area and then run south through the backdunes. The purpose of the sand highway is to provide a reference for vehicles traveling through the back dunes.

¹¹ There are also approximately 41 smaller (e.g., typically no more than 4,000 square feet in size) private inholdings within the La Grande property.

¹² California least tern are listed as endangered under both the Federal and State ESAs, and western snowy plover are federally-listed as threatened.

to vehicle use and camping unless and until a management plan was submitted by DPR and approved by the County. The identified management plan was intended to be the vehicle to address coastal resource management in relation to vehicle impacts at the Park. However, in considering the proposed LUP, the Coastal Commission¹³ found that the LUP's proposed policies and standards related to OHV use did not adequately protect ESHA, and thus the LUP was not approved at that time. In denying the LUP, and in addition to the concept of vehicles in ESHA, a main area of Commission concern was appropriately locating Park access points and OHV staging areas in order to reduce adverse coastal resource impacts from vehicular use, including with respect to impacts on non-vehicular recreational beach use in the more northerly part of the Park, and with respect to concerns about Arroyo Grande Creek habitat resources. At the LUP hearing, the Commission directed staff from the Commission, the County, and State Parks to develop a solution for these access points and staging areas issues. Thereafter, the agencies worked together with other interested parties to evaluate and develop strategies that might be able to address the core issues raised regarding continued vehicular use (including OHV and camping uses) on the beach and in the dunes, and the manner in which that might be accommodated while also protecting coastal resources.

Ultimately, there were no definitive decisions nor agreements about that core dilemma from nearly 40 years ago, which ultimately continues to the current day. Rather, what the parties *did* agree to was that they did not want to delay the entire LUP/LCP certification over the issue.¹⁴ So instead, and to avoid full closure of the Park to vehicular use as proposed by the County through its LUP/LCP, State Parks applied for and the Commission approved CDP 4-82-300 to define basic operational parameters for the Park in 1982. Importantly, and in large measure because of the context in which it was derived, CDP 4-82-300 was structured *not to* permanently codify ODSVRA use parameters, rather it was structured to identify interim and temporary use intensities, particularly related to how the Park was accessed by vehicles, and to set in motion a series of requirements to help resolve issues regarding the appropriate location and intensity of vehicular use at ODSVRA. The conceptual framework underpinning the CDP approval most reasonably appears to have been to allow the LUP and LCP to be certified following approval of the interim measures under the CDP, and then to ensure that ODSVRA operational parameters were updated moving forward in to comport with LCP requirements.¹⁵

Specifically, CDP 4-82-300 authorized interim Park entrances (and the construction of two interim kiosks at the two entry locations), designated an interim OHV staging area, and set interim vehicle use limits.¹⁶ The CDP was approved with the intent that these interim use parameters would essentially be temporary to allow time for the Commission, the County, State Parks, and other interested parties to come to some agreement on the level and location of use

¹³ At that time, the South Central Regional Coastal Commission. As part of Proposition 20 (the "Coastal Initiative" of 1972) and the Coastal Act (of 1976), there were originally six separate regional Coastal Commissions in addition to a statewide Commission. The regional Coastal Commissions were ultimately phased out to leave just one statewide Coastal Commission in 1981.

¹⁴ The LUP was subsequently certified in 1984, and the overall LCP certified in 1988.

¹⁵ And the certified LCP includes applicable policies that reference CDP 4-82-300 in this regard.

¹⁶ The Commission also denied DPR's proposal to place a third interim access kiosk and entrance at the causeway across Oso Flaco Lake (see Special Conditions 1 and 2 of base CDP in Exhibit 4).

intensity that would ultimately be allowed consistent with protection of coastal resources, including in light of the fact that the County at the time was threatening to close the Park through certification of the LCP. Importantly, the CDP also was structured that if final decisions were not made within the specified time frames (all within the mid-1980s), then the permit would “be subject to review and modification if necessary or appropriate” by the Commission (see base CDP 4-82-300 Special Condition 1(b) on page 1 of **Exhibit 4**). The CDP also established the required annual review process, which specified through it that “if...OHV use within [ODSVRA] is not occurring in a manner which protects environmentally sensitive habitat and adjacent community values consistent with the requirements of the San Luis Obispo County Local Coastal Program Land Use Plan, then OHV access may be further limited pursuant to the access and habitat protection policies of the County certified Land Use Plan” (see base CDP 4-82-300 Special Condition 6 on pages 4 and 5 of **Exhibit 4**). In short, the original CDP was structured to allow the Commission to ‘review and modify’ ODSVRA operational parameters if certain conditions were not complied with (and they have not to date been complied with), and to allow the Commission through the annual CDP review process to make changes to ODSVRA operational and management parameters for the protection of coastal resources as required by the CDP, which is further informed by consistency with the LCP and Coastal Act.¹⁷

The CDP has since been amended five times, the most recent of which was in 2001 (see **Exhibit 4** for the changes each amendment made to the conditions of the CDP, including a clean copy of the current conditions as amended starting on page 38 of the exhibit). Importantly, that 2001 Commission action updated the interim use parameters, which have not changed since (see Special Condition 3 of CDP Amendment 4-82-300-A5 on pages 34 and 35 of **Exhibit 4**), and which allow up to 2,580 street-legal vehicles per day, up to 1,000 camping street-legal vehicles per day, and up to 1,720 OHVs at any given time, where the street-legal vehicle and OHV standards are allowed to be exceeded on Memorial Day, Fourth of July, Labor Day, and Thanksgiving weekends and holidays. At the same time, that 2001 action also directed a newly established Technical Review Team (TRT)¹⁸ to evaluate how best to manage the Park given the inherent conflicts between vehicle use and coastal resource protection, including to help establish a ‘carrying capacity’ for ODSVRA. That 2001 action also prioritized the significance of the annual CDP review process, making it instead a prerequisite for continued CDP authorization on the basis of the need to protect coastal resources. Specifically, Special Condition 2 of the fifth amendment states (see also page 34 of **Exhibit 4**):

¹⁷ Although the Commission does not often structure CDP approvals to allow for annual re-review in the manner required here, the structure of this CDP is based on the fact that the original allowed use parameters were *intended* to be temporary due to the nature of Park operations and management with respect to OHV use which warranted subsequent consideration in terms of impacts to coastal resources; the fact that the LCP provisions to address such use parameters in relation to coastal resource impacts were in flux and not yet certified (and as an initial matter sought to close the Park to vehicular use); and the intention that the CDP was to be a vehicle to bring LCP-consistent finality to ODSVRA operational questions once the LCP was certified.

¹⁸ Where the TRT is made up of representatives from: Coastal Commission staff, San Luis Obispo County, USFWS, CDFW, DPR’s OHV Division, the OHV Community, the Environmental Community, the Business Community, and the Residential Community, with the ODSVRA Superintendent as a non-voting member. The TRT is advised by a Scientific Subcommittee, consisting of resource experts representing the five government agencies on the TRT, and at least two independent scientists with expertise in applicable sensitive species and ecological processes.

Renewal of Permit. Annually, the Commission shall review the overall effectiveness of the Technical Review Team in managing vehicle impacts at the ODSVRA. If the Commission is satisfied with the review, this amendment will remain in effect for an additional year. A longer permit may be requested in the future. Otherwise, an alternative approach to resource management, or set of management measures, may be instituted through this review process.

Thus, the Commission is to annually review the effectiveness of the TRT in managing vehicle impacts at ODSVRA management, and, if not satisfied that appropriate measures are being taken for the protection of coastal resources, may institute alternative approaches to such management. In short, although the precise manner of annual CDP review has changed as reflected in 2001's Special Condition 2, base CDP Special Condition 1(b) has not changed, and the Commission still retains the ability to modify ODSVRA operational parameters pursuant to both that condition and the current annual review requirements (Special Condition 2). The Commission last conducted an annual CDP review in January of 2017.

In short, the CDP, as amended, is still fundamentally structured as providing for interim and temporary use parameters that have not been finalized even nearly four decades later. Much has changed in that time frame, and the CDP annual review provides the means for evaluating ODSVRA ongoing operations with the ability to adapt operational and management measures in consideration of current issues, constraints, and realities affecting ODSVRA uses and operations in relation to coastal resource impacts. Critically, the CDP as approved and as accepted by State Parks provides the Commission with broad and ongoing authority and jurisdiction to make changes to State Parks' operational and management parameters at ODSVRA through the annual review process in order to protect coastal resources consistent with the Coastal Act and the LCP.

III. ODSVRA CDP ANNUAL REVIEW

Although the Commission has to date used its discretion through the annual review process to allow ODSVRA activities to continue based on temporary and interim use parameters (as adjusted most recently in 2001) for decades, it has become clear that the coastal resource issues and constraints affecting vehicular operations at the Park are only becoming more acute, and have reached a point where it is simply not appropriate for the Commission to continue to allow for ongoing OHV use as it has in the past without changes to better protect coastal resources. In fact, fundamental coastal resource issues and constraints related to LCP compliance, air quality and public health, rare and endangered species and habitats, environmental justice, and tribal concerns, all point to the need for the Commission to act to exercise the discretion provided to it by the CDP to help start to better resolve the significant coastal resource problems associated with ongoing uses at ODSVRA. The bottom line is that the Park cannot continue to operate as it has in the past without change, and that the range of coastal resource issues and constraints affecting ODSVRA together suggest that it is time to start thinking about ways to transition the Park away from high-intensity OHV use to other forms of lower-impact public access and recreation. It is also clear that it is appropriate for the Commission to provide explicit direction to State Parks on these points, including so they can take the Commission's perspective into

account as they move forward with respect to future operational and management plans at ODSVRA, including through their ongoing Public Works Plan efforts.

Fundamentally, visioning for the future of the Park starts with a classic constraints analysis, and this annual review is structured in that way, with the analysis that follows walking through the significant coastal resource issues/constraints that are affecting ODSVRA operations, and then identifying next steps to address same from a Coastal Act/LCP/CDP perspective. Importantly, while the coastal resource issues/constraints are addressed individually below, all of them represent overlapping issues that affect and are affected by each other. The analyses that follow must be understood in that context.

A. CDP 4-82-300 COMPLIANCE ISSUES

As described above, the Commission's base CDP authorized certain operational and use parameters for OHV activity within the sensitive dune environment at the Park back in the early 1980s. That CDP was premised on understanding and balancing the tension between OHV use and the fact that such use was occurring within biologically sensitive dune areas that the Commission and the County's LCP have both determined meet the Coastal Act's definition of environmentally sensitive habitat area (or ESHA, as defined in Coastal Act Section 30107.5), where such intensive and impactful non-resource dependent use is not allowed by the Coastal Act or the LCP. The CDP's terms and conditions, as amended, set in motion a series of (ultimately unsuccessful) efforts to understand the environmentally sustainable "carrying capacity" of the dunes to accommodate OHV use (e.g., carrying capacity studies, the Technical Review Team (TRT) effort, interim use limits, etc.). Ultimately, even today, almost 40 years later, ODSVRA is operating under *interim* and only *temporarily authorized* maximum use standards (e.g., maximum numbers of on-road vehicles, OHVs, campers, etc., per day) that have yet to be finalized as required by the CDP based on an actual accounting of issues and constraints that would dictate appropriate use levels in consideration of coastal resource impacts. As discussed herein, it is clear that current interim use levels are not sustainable due to CDP, Coastal Act, and LCP inconsistencies.

Vehicle Entrances

As detailed above, CDP 4-82-300 as amended identifies the current Park entrance and staging system as *interim*, and subject to further review and study to designate this system (or alternatives to it) as final through the CDP and the LCP. To date, the Commission has not yet reviewed and approved final entrance and staging area locations and provisions, and DPR is out of compliance with the CDP for this reason (see also violation finding below). As described above, the conditions of the CDP require DPR to prepare an environmental impact analysis adequate to enable the selection of a final entrance/staging area system determined to be the least environmentally damaging; require that that final system be incorporated into the LUP; require that that final LCP-certified system be constructed within three years of LUP certification (i.e., by the late 1980s); and require the permit to be subject to review and modification if necessary or appropriate by the Commission if the final system is not constructed by that deadline (which it was not, and has never been).

While any number of sites could be studied, the CDP identifies at least four sites to be analyzed: the Calendar Road area; the stables/agricultural lands area south of Arroyo Grande Creek; agricultural lands north of Oso Flaco Creek adjacent to the Phillips 66 (previously Union Oil) property; and the interim access and staging areas. In addition to requiring that the final selected access and staging system be the least environmentally damaging, the base CDP requires that the selected access and staging system reduce OHV-related impacts to the residential character of the community of Oceano as compared to the interim locations, that it facilitate the successful separation and regulation of recreational uses within ODSVRA, and that it be able to be developed expeditiously. Because the location of any identified final staging areas would necessarily affect the way in which they are accessed via entrances to the Park, the CDP designates the two existing entrance locations at West Grand Avenue and Pier Avenue as temporary. Thus, the CDP requires that DPR evaluate and present options for a *final* Park entrance and staging system for Commission consideration. Despite this being required over three decades ago, State Parks has never submitted, and the Commission has never acted upon, any proposed final entrance and staging system (see also violation finding below).

This is critical because the route by which vehicles access the Park, including to get to camping and riding areas, is a long-standing issue that has significant implications on coastal resource protection and access management. It is also a major public access issue for the residents of the adjacent community of Oceano, many of whom complain that the entrances de facto turn the six miles of community-fronting beaches into a highway, and preclude other more typical beach uses (e.g., for picnicking, lounging/playing on the sand, walking, swimming, surfing, skimboarding, and other more typical beach recreational opportunities). Currently, street legal vehicles, with or without OHVs in tow, access the beach from either West Grand Avenue in Grover Beach or Pier Avenue in Oceano. Vehicles then traverse the beach in a southerly direction to access the riding area. This involves driving along a stretch of shoreline used by pedestrians and general beachgoers, many of whom are local residents, but also visitors to the area. This mix of vehicles, pedestrians, and other beachgoers leads to fundamental user incompatibilities, and has resulted in user conflicts and public safety issues. In addition, when it is flowing, vehicles heading to the camping and OHV riding areas must also drive through the mouth of Arroyo Grande Creek, which provides habitat for ESA-threatened Steelhead trout and ESA-endangered Tidewater goby (see also discussion below). Typically, the only time the Creek has significant flows is during the rainy season, and it otherwise terminates in a lagoon inland of the immediate shoreline. However, when it is flowing, the Creek presents an obstacle to vehicular travel, including to get to the OHV riding and staging areas, and has been the site of problems in this respect as vehicles attempt to navigate through and across the Creek to access the riding areas further south, sometimes resulting in vehicles being swept into the ocean. OHVs are currently off-loaded from street legal vehicles at the interim staging area which is located south of Arroyo Grande Creek, and thus it is the street legal vehicles and trailers that make this creek crossing, not OHVs.

The current entrance and staging areas were designated as interim under CDP 4-82-300, with the goal of potentially locating final access and staging areas elsewhere that would avoid conflicts between more typical beach recreational uses and OHV use, as well as to eliminate the need for vehicles to cross Arroyo Grande Creek.

DPR has studied the access and staging area issue. Specifically, DPR released an Environmental Impact Report (EIR) in 1991 designed to identify the least environmentally damaging staging

area and entrance points. That 1991 EIR evaluated the potential impacts associated with five alternative access corridors: West Grand Avenue, Pier Avenue, Calendar Road, Railroad Avenue, and Silver Spur Place. Ultimately, the EIR determined that the West Grand Avenue and Pier Avenue sites were the least environmentally damaging and that they should be designated permanent. DPR amended their General Development Plan in 1994 to state as much. However, as part of the process to establish them as final entrance locations through the CDP, Special Condition 1(b) requires DPR to update the State Parks General Development Plan *and* for the LCP to be amended. While DPR updated the State Park General Development Plan to reflect the West Grand and Pier Avenue accesses as permanent (at least according to DPR), DPR never applied to San Luis Obispo County for the requisite LCP amendment (nor to the Commission for a CDP amendment to update and reflect the final site selection), and through the required LCP amendment the Commission has yet to consider the question of which alternatives are the most appropriate entrance and staging area alternatives, including taking into account DPR's prior environmental analysis on the issue.

In 2006, DPR completed a second alternative access study. This 2006 study evaluated a total of eight potential accessways: West Grand Avenue, Pier Avenue, Ocean Street, Creek Road, Silver Spur Place, Phillips 66, Little Oso Flaco Lake, and Oso Flaco Lake. Ultimately, DPR's study again identified continued use of West Grand Avenue and Pier Avenue as the environmentally preferred alternative. The study was presented to the TRT for discussion, but the TRT never formally reviewed the document nor made any recommendations on the study.¹⁹ Although DPR went through the process of completing the access study, DPR never pursued amendments to the CDP or LCP to finalize the interim nature of the staging area and West Grand Avenue/Pier Avenue entrance access points. Thus, all entrance and staging areas remain classified as interim under the CDP, and the conditions of the CDP remain unfulfilled.

DPR has consistently argued that the two previous studies, particularly the latest study from 2006, have provided the appropriate analysis and conclusions regarding the proper final access and staging locations, and that it considers this issue resolved. DPR further indicates that, but for some minor updates regarding sensitive species habitat considerations, no additional study is necessary, including because there have been no capital improvements or significant changes made in the Park since the studies were last prepared. Thus, DPR indicates that new studies would not provide any additional relevant information not already known.

However, while the reports are substantial, the most recent is 13 years old (and the original 29 years old), and they do not take into account more recent changes in context as well as new and emerging coastal resource issues that affect the access and staging locations, particularly with respect to the County's La Grande property, dust control/air quality issues, and environmental justice concerns regarding Oceano beach use, including all of the issues and constraints

¹⁹ The TRT identified its intention to review the results of the 2006 study as a research priority in 2007 and continued discussion of the issue as a research and management issue in 2008 and 2009. However, neither the TRT nor the Scientific Subcommittee has ever formally reviewed or commented on the study. Since the 2010 annual TRT report, the TRT has not taken any action to resolve the interim status of the entrance access and staging areas, and the issue has no longer been a topic of TRT discussion.

discussed in this report.²⁰ Regardless of whether State Parks' prior studies are stale or not, State Parks has *not* worked with the County to submit an LCP amendment to the Commission for action (at which point the Commission would evaluate the sufficiency of State Parks' studies) in order to finalize the staging and entrance points, as expressly required by CDP 4-82-300 Special Condition 1(b) (again, see **Exhibit 4**). Therefore, the staging and entrance designations are not final, and State Parks continues to be out of compliance with this CDP requirement.

In short, the Commission exercises continuing jurisdiction over final designation of the Park entrances and staging areas because DPR has not satisfied its permit requirements to designate a final Park entrance and staging area (subject to Commission approval) or to amend the certified LCP to formalize these final designations. Vehicles crossing through and otherwise adversely impacting Arroyo Grande Creek and its listed species, and vehicular use of six miles of public beaches to the detriment of more typical beach access and recreation uses, are all serious unresolved and unmitigated issues that require resolution via final designation of entrance and staging areas. The existing access and staging system is simply not sustainable with regard to protection of coastal resources, and more broadly, the fact that the CDP identifies Park entrance access and staging as interim and subject to further study only leads to a lack of certainty and clarity for DPR, the Commission, the County, and other interested agencies and parties with respect to Park operations. In addition, the fact that this issue was intended to be resolved decades ago and remains unresolved only serves to fuel debates amongst competing interests about what *should* be designated as final entrance and staging locations. It also means that DPR is not in compliance with the CDP, which does not serve to further the Commission's or DPR's objectives via the CDP for effectively managing the Park while protecting coastal resources. Again, this is a fundamental issue that must be resolved and that argues against continued OHV use under the status quo.

In light of the above, and to begin to address and resolve the access and staging CDP issues, **Special Condition 11** requires an Entrance Study. The purpose of the Study is to identify a preferred entrance system for the Park, including through analysis of the environmental impacts and benefits (including with respect to dunes, habitats, creeks, beaches, neighborhoods, and community character) and feasibility associated with alternative entrances, including evaluating options across the same set of analysis factors and levels of detail. The Executive Director will agendize Commission consideration of the Entrance Study at the next annual CDP review, when the Commission may require changes to Park entrances in consideration of the Study and any other relevant information.

Vehicle Use Limits

Under the CDP the current vehicle use limits allow up to 2,580 street-legal vehicles per day, up to 1,000 camping street-legal vehicles per day, and up to 1,720 OHVs at any given time, where the street-legal vehicle and OHV standards are allowed to be exceeded on Memorial Day, Fourth

²⁰ All three of these topics are discussed in more depth later in this report, but, in short, the ultimate disposition of the La Grande property (including ownership and allowed use of it), the potential need to implement dust control and air quality measures, and the need to evaluate environmental justice considerations for the community of Oceano are all issues that could affect the Park entrance and staging areas, in addition to the other issues discussed in this report that also affect same, and point to the need to update past studies in light of current coastal resource issues and context.

of July, Labor Day, and Thanksgiving weekends and holidays (see Special Condition 3 of 2001's fifth amendment on pages 34 and 35 of **Exhibit 4**). The CDP continues to identify these numbers as interim, and through the 2001 amendment directed the TRT to research and develop evidence that would support these numbers or some modified level and area of use at the Park (see CDP 4-82-300-A5, Special Conditions 4 and 5, on pages 35-37 of **Exhibit 4**). In other words, the CDP amendment that authorized the above-listed interim vehicle use limits set these numbers based on historic use patterns represented by DPR rather than rigorous scientific rationale. Development of actual use limits that did have scientific rationale was to be the primary role of the TRT to ascertain. *The TRT never did this*, and thus the use limits have remained the same since 2001 – nearly two decades ago. This represents a significant unresolved Park management issue under the CDP.

These interim use limits were never anticipated to establish the ultimate carrying capacity for the ODSVRA. Instead, Special Condition 4(a) specified a primary function of the TRT is to “develop recommendations to the Superintendent of the ODSVRA regarding...adjustments to day and overnight use limits...” and, as part of its ongoing research and monitoring efforts, Special Condition 5(d) states: “conduct a comprehensive, long-term monitoring and comparative analysis of the resources impacts associated with varying levels of use, including the highest (peak-use) attendance periods.” Essentially, the condition's interim vehicle use limits were structured as starting points from which the TRT was supposed to recommend adjustments over time based on what was learned through their ongoing research. The CDP anticipated that the TRT would be continually monitoring vehicle use numbers and their corresponding impacts on Park coastal resources, and would then recommend scientifically based limits to be adopted through amendment of the CDP. However, that never happened, these additional studies have not been conducted, the TRT has not made progress on this key issue, and the TRT does not currently consider use limit monitoring as a primary research or monitoring focus. In short, the TRT experiment has not resulted in the evidence-based change that the Commission envisioned it would in 2001, and it has outlived its usefulness in that regard.

In addition to the limits having never been modified in light of coastal resource constraints, there remain additional unaddressed issues related to how to accurately count and enforce said use limits. Special Condition 3(c) limits the number of OHVs to 1,720 “at any given time.” There are several practical difficulties involved with both accurately counting OHVs entering the Park and accurately tallying how many OHVs remain at any given time. First, DPR does not keep a tally of the number of vehicles leaving the Park. As a result, they currently do not know how many vehicles may be present at any one time. Second, the entrance kiosks close at night but users can still access and leave the Park at these times, and thus Parks staff is not present to tally the number of OHVs that come in or out. In order to account for OHVs that come into the ODSVRA after the kiosks are closed, DPR multiplies the number of vehicles entering the ODSVRA after the kiosks are closed by a set number that they indicate is intended to represent the average number of OHVs that are brought in per vehicle during the day, but the OHVs are not actually counted. And third, DPR does not verify how many OHVs are brought in via closed trailer where the number of OHVs cannot be identified from the outside, instead relying on the driver of the vehicle to tell them how many OHVs are being trailered in. All of these factors contribute to a lack of counting precision, and thus it is not clear that the current system can effectively provide

accuracy in use counts and thus does not ensure OHV operational management is complying with the requirements of the CDP.

In short, the Commission exercises continuing jurisdiction over setting use limits because they have only been recognized through the CDP process as interim in nature to date and have never been modified (nearly two decades later) in light of coastal resource constraints and appropriate carrying capacity, as has been required but not adhered to for nearly four decades. Clearly, for the myriad reasons described in this report, it would appear that the interim use limits oversubscribe the Park and are leading to significant coastal resource impacts. As such, reliance on the interim use limits themselves are not sustainable. And the TRT's function in evaluating and modifying them has simply failed as mechanism to regulate the use limits in consideration of impacts to coastal resources. Even within the context of the interim use limits themselves, as discussed above, it is clear that State Parks cannot claim compliance with even the interim use limits based on their operational management and accounting of vehicle numbers allowed within the Park at any given time.

Thus, broadly, the resolution of the Park's actual sustainable carrying capacity is a clear and fundamental requirement that needs resolution, and is a constraint to continued OHV use and the Park's status quo. In light of the above, special conditions are necessary to help begin to address the CDP's carrying capacity and sustainable use limits. **Special Condition 5** eliminates the TRT and replaces it with a Monitoring Program. Under the Program, each year State Parks will prepare monitoring report and submit it to the Executive Director, where it will document the effectiveness of Park management activities in protecting dune and other coastal resources (including evaluating vehicular recreation and coastal resource trends, impacts, and issues facing Park operations), and to support recommendations for changes to Park management to better address any identified impacts. The Executive Director will also have the discretion to schedule any particular monitoring report for a Coastal Commission hearing where the Commission will be asked to concur with the Executive Director's report approval and/or to make changes to operational parameters under the CDP otherwise to better protect coastal resources. The Program is a more typical condition compliance protocol, and should allow for more effective resource management than the current TRT and annual review construct.

Special Condition 9 modifies the existing specified interim use limits due to loss of OHV acreage (based upon dust control efforts, habitat needs, etc.) since the time they were established in 2001. Specifically, since the existing interim limits were based off 1,500 acres being available for OHV and camping use back in 2001, and that acreage amount has been reduced by 30% since then down to 1,048 acres (i.e., 152 acres has been converted for dust control purposes and 300 acres for habitat needs, see additional discussion on both of these issues subsequently), the use numbers must also be reduced a commensurate 30%. **Special Condition 9** also specifies that a street-legal vehicle that also camps overnight is counted towards both totals to better confine and prescribe such uses and use intensities, and for clarity and ease of enforcement.

Special Condition 10 eliminates the four exceptions (specified in Special Condition 3d of the fifth amendment to the CDP; again see **Exhibit 4**) that currently allow unlimited vehicular and OHV use on Memorial Day, Fourth of July, Labor Day, and Thanksgiving weekends and related days in recognition that even the prescribed interim limits are not rigorously supported by science that would suggest they adequately protect coastal resources, and it isn't appropriate to

allow them to be exceeded at an unlimited basis at these times as a result. In addition, State Parks has previously entered in to a settlement agreement regarding these four exceedances and indicates that they are no longer actually allowed based on that settlement.

Finally, **Special Condition 2** requires the preparation of a vehicular enforcement plan to develop the protocols for accurate counting and enforcing all of these limits to help ensure better condition compliance on these key points.

Special Events

In addition, special events at the Park raise similar use and carrying capacity concerns, particularly considering that special events do not appear to be contemplated within any of the historically-applied interim use limits.²¹ For example, “Huckfest” is an event that has taken place informally within the ODSVRA for over ten years, and has recently grown in size and formality. The event is an exhibition of vehicles jumping (or “hucking”) off of sand dunes (see photos in **Exhibit 3**). Prior events have included a vendor area, event stage, and a ramp for a motorcycle exhibition. Ticket prices for Park entrance were also increased for the Huckfest weekend to \$35 for day use and \$100 for camping. This is a significant departure from the typical \$5 day use fee and \$10 camping fee.

In fact, these events have resulted in significant coastal resource issues. For example, the 2013 event drew many more spectators than expected. Some of the issues included traffic congestion in and around ODSVRA entrance points in Grover Beach and Oceano, spectators massing on top of vegetation in fenced-off dune protection areas, and an exceedance of the daily vehicle use limits. Based on the coastal resource impacts associated with the 2013 event, and in anticipation of a potential 2014 event, Commission staff sent a letter to DPR to ensure that vehicle use limits and resource protection requirements were adhered to going forward. In any case, if these types of special events are going to continue and specifically be contemplated, it will be important that they are within allowable use limits, and that other coastal resource impacts resulting from such activities are appropriately accounted for and mitigated (e.g., sensitive resources are protected), including through specific special event provisions. The growth in size of the Huckfest event, the portion of the ODSVRA it occupies (and by extension the degree to which it displaces other public use and other types of coastal recreation commensurately), and the increase in price to enter the ODSVRA also raise other potential coastal resource issues that need to be addressed through special event parameters.

In addition, there have been other and more recent events that also raise similar coastal resource concerns. For example, in 2018 a proposed music festival would have taken place at ODSVRA, raising significant concerns regarding compliance with the CDP specifically, but also whether such a festival, one that was proposed to be a 24-hour music event, was appropriate at all in a state coastal park in light of potential and anticipated impacts to coastal resources.²² Thus, other

²¹ It is worth noting that the CDP does not specify any particular use or other limits specific to special events, rather special events must be undertaken consistent with the generally applicable interim use limits designated in the CDP, and with CDP requirements more generally. In other words, if not covered by the base CDP (and special events as a rule are not so covered), then such special events require their own CDP.

²² The music festival was ultimately cancelled, but the event sponsor has indicated an interest in pursuing a future event.

special events, including music festivals, raise similar concerns, including in terms of the ability of State Parks to appropriately manage the area for public safety and natural resource management. As such, **Special Condition 6** requires State Parks to develop a special events protocol, including that a separate CDP be required for all special events that could result in adverse impacts to coastal resources (including music festivals, concerts, OHV events (e.g., Huckfest), and any other special events that propose an intensity of use beyond those specified in the CDP). The protocol is to also provide a methodology for identifying, evaluating, mitigating (for projected coastal resource impacts), and permitting any proposed special events.

Other Issues

It is also important to note that, fundamentally, all of the other issues and constraints discussed separately below are also all CDP 4-82-300 compliance issues, including as they relate to these core questions of sustainable use under the CDP in light of coastal resource considerations (e.g., issues associated with San Luis Obispo County LCP compliance, air quality requirements, Endangered Species Act compliance, County ownership of some 584 acres of the OHV area in the Park, California Native American tribal concerns (e.g., regarding ancestral lands and sacred sites), and environmental justice concerns related to the effect of Park operations on the surrounding area, including the community of Oceano). That is not to say that each of these are not issues on their own and that these issues do not independently require resolution for other reasons, but rather it is to acknowledge that the Commission's base CDP remains the fundamental Coastal Act regulatory instrument that governs current operations as well as any next steps at ODSVRA and must account for these issues and that enables the Commission to require changes to Park operations and management provisions to account for these interconnected coastal resource issues. As a result, all of the changes required through subsequent analyses below are also required for CDP compliance purposes (i.e., **Special Conditions 1 through 15**). In addition, the Commission needs to provide direction to State Parks moving forward in light of all of the issues and constraints identified herein, and that too is a CDP compliance issue supporting the need to send such a letter (see **Exhibit 13**).

B. LCP COMPLIANCE ISSUES

ODSVRA is ESHA

One of the most significant challenges facing ODSVRA is the fact that the LCP designates the *entire* ODSVRA as coastal dune ESHA. The LCP defines ESHA consistent with Coastal Act Section 30107.5 as “where plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and development” (LCP Section 23.11). The definition then goes on to state that ESHA includes several habitat types, specifically: “wetlands, coastal streams and riparian vegetation, terrestrial and marine habitats.” Dunes are listed as a type of terrestrial habitat ESHA, and the South County Coastal Area Plan, a component of the LCP, maps the entirety of ODSVRA as “Coastal Zone – Environmentally Sensitive Habitats, Terrestrial Habitat” (see the LCP's ESHA map showing the entire ODSVRA as dune ESHA in **Exhibit 6**). Within ESHA, the LCP states that “The Coastal Act provides protection for these areas and permits only resource-dependent uses within the habitat area” and thus only “those [uses] dependent on such resources shall be allowed within the area” (LUP Coastal Plan Environmentally Sensitive Habitats Policy 1). In addition, the LCP further designates the Park's

wetland and lake areas as Sensitive Resource Areas (SRAs)²³ (i.e., specific types of ESHA under the LCP that are also governed by additional SRA provisions that serve to further protect such resource areas from degradation).

In addition to certifying these LCP designations, the Commission has also repeatedly affirmed the entirety of ODSVRA as ESHA in its actions, including those relating to amendments to the CDP. For example, in the last base CDP amendment from 2001, the Commission found:

The Oceano Dunes system, including the OHV riding area, must be considered environmentally sensitive habitat for several reasons. First, coastal dunes are an extremely limited environmental resource of statewide significance. Oceanfront dunes provide unique, sensitive habitat values and throughout its history, the Commission has placed high priority on the protection and preservation of dune systems. On the Central coast, this includes the Nipomo Dunes, Asilomar Dunes, and the Del Monte Dunes. The significance of the natural resource values of the Nipomo Dunes – particularly the Flandrian component along the shoreline – is well recognized, as is the potential to restore and enhance these values in degraded areas (see more detail below).

As shown, one of the most critical functions of the dune system is its role as habitat for very unique flora and fauna. These are species which are specially adapted to the conditions and opportunities found in the dunes. Dune plants in particular play a special role by both stabilizing the dunes from the effects of wind erosion, and hosting rare fauna. However, as the natural dune system has been fragmented and degraded, the risk of extinction has increased for several species. Thus, each new impact within the dunes system has and will continue to contribute to the cumulative decline of these species. ...

Under the Coastal Act, the entire ODSVRA is an environmentally sensitive habitat area. First, as discussed above, the ODSVRA is part and parcel of a significant and sensitive ecological system – the Flandrian component of the Nipomo-Guadalupe dunes complex. Since approval of Coastal Development Permit 4-82-300 in 1982, much has been learned about the important role of specific areas within the dunes, and how both vegetated and barren sand surfaces contribute to the overall functioning of the dunes habitat system – even when these areas are to one degree or another degraded. In addition, threatened species such as the western snowy plover have since been identified, further highlighting the importance of dune preservation in this area.

Indeed, the ODSVRA, in addition to being an environmentally sensitive habitat area by virtue of its importance as a piece of the larger Nipomo Flandrian dune system, is also existing and potential habitat for particular sensitive species. Although the natural formation of the dunes have been substantially altered by vehicle use, the site currently supports rare and important native dune habitats. This includes the significant extent of bare sand habitat, which provide nesting areas for the threatened western snowy plover. Bare sand areas will also support the natural and human induced recurrence of rare

²³ Including the Oso Flaco Lakes SRA, the Dune Lakes SRA, and the Black Lake Canyon SRA portions of the Park.

native plant and animal species, as will areas of the site where habitat values have been diminished by the presence of non-native species.

Overall, there is no doubt that the ODSVRA is an “area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which easily could be disturbed or degraded by human activities and developments.” Because native dune plants are superbly adapted to life in an environment subject to periodic disturbance, natural recovery would be expected following removal of disruptive activity.

Further, more recently, in approving a CDP for State Parks dust control activities in 2017, the Commission also found:

The entire ODSVRA area has been identified by the Commission as an environmentally sensitive habitat area (ESHA).²⁴ Furthermore, the entire ODSVRA area is mapped as a sensitive resource area (which also constitutes ESHA per the LCP) in the San Luis Obispo County LCP (see Exhibit 3). ODSVRA is part of a significant and sensitive ecological system, the Nipomo-Guadalupe dunes complex, much of which has been preserved exclusively for habitat protection purposes. In addition, ODSVRA has been identified as critical habitat for the threatened Western snowy plover, and supports other sensitive species, including the endangered California least tern, Steelhead trout, and Tidewater goby, which are protected under the Federal and State Endangered Species Acts.

Most recently, the Commission’s Staff Ecologist, Dr. Laurie Koteen, has provided a memorandum documenting her findings and conclusions as to why the entire ODSVRA rises to level of ESHA under both the LCP and Coastal Act (see **Exhibit 11**). In short, over multiple contexts in which the Commission has regulated development activities within ODSVRA, the Commission has consistently and clearly affirmed the LCP designation of the entire Park as ESHA, as discussed above.

LCP does not allow OHV use in ESHA

Importantly, OHV use is not allowed in ESHA (or in SRAs) pursuant to the LCP, and thus, per the LCP, OHV use is not actually allowed at the Park at all. Again, as described above, LUP Coastal Plan Environmentally Sensitive Habitats Policy 1 states that “The Coastal Act provides protection for these areas and **permits only resource-dependent uses** within the habitat area” and thus only “those [uses] **dependent on such resources** shall be allowed within the area” (emphasis added). In past cases, the Commission has only found a very limited type of uses to be dependent on ESHA resources (i.e., low-intensity access and recreation uses (such as interpretive trails), nature study, scientific research, and habitat enhancement/restoration); off-highway vehicle use is not one of them, and as such vehicular activity is not dependent on ESHA resources in any way.

²⁴ See, for example, CDP 4-82-300 as amended, and Commission reviews related to its implementation over the years.

At the same time, because the LCP also acknowledges, as a matter of historical fact, that OHV use does in fact take place in the Park, and because some LCP policies refer to such vehicular use, it has been argued by some that the LCP includes some internal incongruities on these points.²⁵ While there is some evidence to suggest that the LCP intended for these potential incongruities to be resolved through establishing the above-described sustainable carrying capacity through CDP and LCP amendments,²⁶ the reality is threefold: first, the appropriate carrying capacity has never been identified nor defined beyond the interim use limits specified under the CDP; second, neither the CDP nor the LCP has been amended to identify an appropriate and environmentally sustainable carrying capacity; and third, even if that was the road to resolution that was intended in the early 1980s, jurisprudence regarding ESHA and LCP interpretation has been clarified since the time of original LCP certification in such a way that LCPs must be construed to be consistent with the Coastal Act, which provides LCPs with their statutory authority.²⁷

The Coastal Act and the LCP's ESHA sections are clear that only resource-dependent uses are allowed in ESHA. OHV use is not dependent on ESHA resources, and thus under the Coastal Act and the LCP, OHV use at ODSVRA is actually prohibited. Any proposed LCP amendment to harmonize LCP policies with ongoing OHV use would similarly be fundamentally inconsistent with the Coastal Act protections required for ESHA per Section 30240. Given this reality, continued OHV use at the Park is not consistent with the LCP.

LCP Identifies the La Grande Property as Habitat Buffer

The La Grande property is a 584-acre San Luis Obispo County-owned parcel located just south of the current staging area that is currently used as an OHV riding area. The La Grande property currently makes up about 40% of the area that DPR currently provides for OHV riding at ODSVRA. The La Grande property was on a 25-year lease from the County to DPR that expired in 2009, and it is currently being used by State Parks without a lease or any other arrangement with the County. The area has long been subject to debate over its proper use, including whether

²⁵ Any potential incongruities on these points, to the degree they exist, are clearly weighted towards ESHA and resource protection, rather than OHV use. In fact, although the LCP explicitly calls out riding in the dunes in places, it does so almost entirely in terms of identifying it as having occurred historically, and also in terms of its adverse impacts on coastal resources. For example, the LCP states that “the unique flora of much of the inland dunes is being severely degraded by recreational vehicle use,” and “continued use of dunes by off-road vehicles has led to environmental degradation of this habitat and has eliminated historical daytime use” (LCP South County Area Plan pages 3-10 through 3-13; see Exhibit 6).

²⁶ For example, the South County Coastal Area Plan references CDP 4-82-300 and its carrying capacity requirements with respect to understanding and regulating potential camping and OHV use limits, habitat protection, community impacts, and other recreational uses (again, see Exhibit 6).

²⁷ See *McAllister v. Coastal Commission* (2009) 169 Cal.App.4th 912, wherein the Sixth District Court of Appeal overturned a project approval by the Commission in the early 2000s interpreting an LCP ESHA policy to allow non-resource-dependent use (in that case residential use) and development in ESHA. The Court found that such an interpretation was improper, and that the LCP must be understood in relation to the requirements of Coastal Act Section 30240, from which LCP ESHA policies derive their authority, even if the LCP policies were drafted in a manner that provide an argument to allow a non-resource-dependent use in ESHA. In other words, the Court determined that an LCP cannot be read to allow non-resource-dependent development or use in ESHA, but rather that it must be understood first in terms of Section 30240 requirements. As a published appellate court decision, that decision requires the Commission to interpret LCPs, including the San Luis Obispo County LCP, in that way.

it should be used for riding activity or whether it should be off-limits to such use and rather serve as protected dune habitat under the LCP. While the La Grande property is currently and has been historically used for riding activity and is located in direct proximity to the existing access and staging areas, immediately north is the Pismo Dunes Natural Preserve, and immediately east is the LCP-protected Dune Lakes area. Thus, the area is at a geographic crossroads between riding and protected dune areas, and its ownership not by DPR but rather the County has contributed to the debate over its proper use. In addition, the LUP calls out the La Grande area as a buffer required for habitat protection purposes not to be used for riding, and this issue has been the subject of litigation, all as described below.

As previously described, when the CDP was approved in 1982, it designated the two access points at West Grand Avenue and Pier Avenue, as well as the staging area located just north of the La Grande property, as interim. The intent of the CDP was to require, within 18 months of LUP certification, selection of final entrance and staging areas, with the Park General Development Plan and the LUP (and CDP) amended to codify the selected locations as final. Only once a final entrance and staging system was operational could the interim access locations also be considered final.²⁸ The CDP thus allowed access routes, staging, and riding within part of the La Grande property on a *conditional* basis until all such issues were resolved pending further study.

The LUP was certified in 1984, two years after the CDP was approved. The South County Coastal Area Plan, a component of the LUP, includes policies addressing the Park in general, and, specifically, the La Grande property. LUP Recreation Policy 9 states that riding activity is only allowed in “identified unfenced vehicular use area...identified in Figure 4” (see **Exhibit 6**). LUP Figure 4, in turn, identifies the Pismo Dunes Natural Preserve, the Oso Flaco Lakes Area (which the CDP identified as off-limits to riding activity), *and* the La Grande property *and* the shoreline south of Pier Avenue (i.e., the CDP-identified interim access location and route) as buffer area, which LUP Policy 9 says is “designated natural area...required for habitat protection...” (again, see **Exhibit 6**). However, LUP Policy 9 also explicitly says that riding within the La Grande property “shall be limited to the Sand Highway west to the sandy beach”, which will minimize conflicts with the protected Dune Lakes area to the east and the preserve to the north.²⁹ The policy concludes by stating that the map in LUP Figure 4 “indicates a buffer area along these critical interface areas.” Finally, LUP Policy 10 states that the management and use of the La Grande property shall be “reexamined periodically to establish the most appropriate management capability” (again, see **Exhibit 6**).

The CDP’s terms and conditions and the LCP’s policies have all further underscored the uncertainty regarding the La Grande property’s proper use. While the CDP allowed for part of the property to be used for riding, it also designated the northern access and staging areas adjacent to the property as interim. The fact that that the LCP, which was adopted *after* the CDP was approved, designates the La Grande property and the beach adjacent to it as natural habitat

²⁸ The location of the identified staging area affect the location of the appropriate final access locations because any access locations need to be used to reach the staging area.

²⁹ It is worth noting that Sand Highway basically bisects the La Grande Property such that nearly half of it is west of the Sand Highway.

buffer (which, based on evidence of OHV impacts, as discussed in this report, is not compatible with OHV riding) suggests that the longer term goal is to phase out riding and create a larger and continuous protected dune area if that is possible. In this context, the LCP's statement that riding activity is allowed between the shoreline and the Sand Highway (LUP Policy 9), which generally bisects the property such that nearly half of the La Grande property is between the shoreline and Sand Highway,³⁰ should be understood as a statement that the LCP recognizes that riding activity is currently allowed in a portion of this area pursuant to the CDP, but should be understood in the broader context that such allowance is *interim* until both the CDP and LUP are amended to designate the final access and staging locations, including potential associated changes to the Sand Highway (which is not explicitly mapped in the LCP) and the La Grande property more broadly, at which time such use may be phased out to allow the entire northern Park area to be protected dune (as appears to be envisioned in LUP Figure 4). Thus, the LUP (which was certified after the CDP) identified La Grande as a buffer area as an LCP objective, but it was recognized through the CDP that that objective depended on finalizing access and staging locations, and that the LUP would be amended at that time as necessary to account for such final locations. In other words, the issues surrounding the La Grande tract are intertwined with those associated with finalizing park access and staging, and its final disposition in that sense may be affected by the outcomes of those decisions.

Commission staff has previously informed the County and DPR of this understanding associated with LCP policies governing the La Grande property's use. In particular, and in anticipation of DPR's 25-year lease expiration in 2009, DPR sought to acquire the La Grande property from the County. In 2007, prior to the proposed sale, the County requested Commission staff's opinion regarding the relevance of LUP Figure 4 and the LCP more broadly in its application to the proposed La Grande Tract sale. The County requested that Commission staff respond to County staff's then-position that Figure 4 was "background information and advisory, but not regulatory or a critical component of the LCP." In response, Commission staff sent a letter to County staff (see the letter in **Exhibit 5**) stating that, based upon past actions regarding the CDP and the LCP, including the fact that LUP Figure 4 and the LCP were adopted by the Commission *after* approval and subsequent amendment to the CDP, it was "Coastal Commission staff's opinion that Figure 4 was intentionally included within the certified LUP to reflect the long-term objectives shared by the County and the Commission for this sensitive dune habitat area, **which included phasing out of the northern access route for OHV use and restricting OHV use on County owned land**" (emphasis added). Therefore, "contrary to the County staff's presumption that Figure 4 should be viewed as background information only, it is the Commission staff's opinion that both Figure 4 and the associated LCP policies establish important standards that are applicable to the use and development of the County owned lands at issue." The letter concluded that it was Commission staff's opinion that selling the La Grande property to DPR for the stated purpose of retaining OHV use would be inconsistent with the land use designation for that site as an area required for habitat protection, as designated by Figure 4 (again, see **Exhibit 5**).³¹

³⁰ The Sand Highway location is not shown in the LCP, but is shown in the CDP in Exhibit C (see Exhibit 4).

³¹ Prior to the sale, the County's Planning Commission concluded that the proposed sale of the La Grande property to State Parks would be inconsistent with Figure 4 of the South County Area Plan. That decision was appealed by the Friends of Oceano Dunes. On April 17, 2007, the County Board of Supervisors partially denied the Friends of Oceano Dunes appeal of the Planning Commission's decision. The denial meant that the Board upheld the Planning

The letter identified that the Commission construed the LCP as conveying an overarching intent at the time of adoption with respect to its treatment of the La Grande property to recognize that riding should eventually be phased out if possible in this area since the objective at that time was to move the access, staging, and riding areas to the south. Assuming that the access and staging areas were moved further south, the La Grande property would no longer be accessible by vehicles coming through the Park from the north, and could instead be a County-owned protected dune area adjacent to other protected areas. The letter notes: “Thus, the relevant LCP policies and Figures reflect the interim status of the OHV and camping use patterns in effect at the time of certification, and the County and the Commission’s long term desire to provide increased protection of sensitive dune habitats, among other ways by relocating the OHV staging area to the south, and establishing a buffer area on all County owned lands.” Thus, consistent with Commission staff’s position over a decade ago, the Commission affirms that the LCP’s treatment of the La Grande property should be understood in the then-identified vision for the access and staging areas to be moved elsewhere away from the northern Park boundary if possible, allowing for this entire area to be protected dune off limits to riding use (though the final access and staging area determinations ultimately will need to be determined through the required access study, LCP amendments, and CDP amendments).

However, since the time that the LUP was first certified in 1984, much has changed. While the access and staging areas are still technically interim pursuant to the CDP, they have been operating there for nearly 40 years, much longer than the initially-identified 18-month post-LUP adoption timeframe to select final entrance and staging locations. In other words, while the LUP was written at a time when the understanding was the CDP would be quickly amended to determine the final Park management and use configuration, such an amendment never happened. The Park has been operating in its interim manner for so long that the context in which the LUP was first set up is not as obviously apparent 35 years later. However, the LUP’s policies and directives must be understood within this historic context, and its relationship to finalizing the Park access and staging system. That is not to say that the vision of access, staging, and riding activity relocated elsewhere within the Park and prohibiting vehicle use in the La Grande property is not still viable and LUP compliant, nor does it mean that the final access, staging, and riding areas necessarily must be relocated elsewhere, as Parks must provide an updated access alternatives analysis to objectively determine and designate the permanent access and staging areas (see previous findings above on this point). Rather, it is a recognition that the LUP was written at a time when the framework for Park management, including determining where access, staging, and riding were to be located, was interim in nature to reflect the interim status of the CDP and the as yet certified status of the LCP. Furthermore, LUP Policy 10 includes language specifying that management of La Grande shall be periodically reexamined to

Commission’s decision confirming that the sale would be inconsistent with the General Plan and LCP. Two lawsuits resulted from the proposed sale and the County’s deliberations, which were ultimately consolidated (*Friends of Oceano Dunes v. County of San Luis Obispo*, and *Sierra Club v. State of California*). In the suit, the Sierra Club sought a traditional writ of mandate to compel the State to operate ODSVRA in compliance with the County’s LCP. The Sierra Club contended that the Figure 4 buffer map delineates the La Grande property as a buffer zone and that the LCP prohibits all OHV use in the buffer zone. The Sierra Club argued that the State is operating in the La Grande property in violation of the County’s LCP, and claimed that the State must revise its general development plan to comply with the LCP. The Court ultimately found that it could not reach the merits of this case because the lawsuit was not a timely challenge to a specific agency action.

determine the most appropriate management capability, reaffirming the interim status of OHV use in La Grande Tract and suggesting that different conclusions about La Grande's use could and would be ascertained in the future. This policy's inclusion further supports the position that while LUP Policy 9 limits any allowable riding in La Grande between the sea and Sand Highway, other conclusions about proper use consideration of coastal resource protection needs could be made in the future given the need to eventually finalize various operational and management parameters as discussed above.

In short, the La Grande property represents about 40% of the total Park area currently allotted to OHV use, or almost 600 acres, and this area is explicitly designated by the LCP as a buffer area that is "required for habitat protection",³² which, based on evidence of OHV use impacts (as discussed in this report) is not compatible with ongoing OHV use. In addition, this nearly 600-acre property is also not even owned by State Parks, but is rather owned almost entirely by San Luis Obispo County. Regarding the La Grande Tract specifically, three additional things are worth noting on this point. First, there is no current lease or other arrangement for State Parks to continue using the La Grande property for any purpose. This is the County's property, and there is nothing stopping the County from disallowing continued State Parks' use of its property at any time, and/or from disallowing OHV use specifically. Second, whereas there may be some internal incongruities related to LCP text describing potential vehicular use more generally at the Park when it is ESHA, that issue does not apply to the La Grande area because the LCP not only identifies this area as ESHA, but it also explicitly calls it a buffer area "required for habitat protection", which, based on evidence of OHV use impacts (as discussed in this report) is not compatible with ongoing OHV use. And third, as recognized in past litigation in the early 2000s over the continued use of the La Grande area for OHV use,³³ the LCP inconsistency issue was not resolved, it remains outstanding to this day, and it would need to be resolved in any Coastal Commission and/or San Luis Obispo County action related to use of that property by OHVs, including through any such action on a CDP amendment, LCP amendment, or a PWP.³⁴ La Grande property issues, including the fact that State Parks does not even own this acreage, are a significant coastal resource issue and constraint to continued OHV use at the Park.

PWP must be LCP-consistent

Finally, a PWP can only be approved if it is consistent with the underlying LCP (see Coastal Act Section 30605). As described above, there are clearly LCP inconsistencies and issues with continued OHV use, and the County has recently acknowledged as much in recent communications with State Parks, stating: "[South County Coastal Area Plan] Figure 4 and Standard 9 need to be updated to be consistent with the Coastal Commission permit. The project description for the PWP EIR needs to be broad enough to address the potential impacts associated with such an amendment to the County Local Coastal Plan. State Parks should submit

³² See South County Coastal Area Plan Recreation Policy 9 and Figure 4 in Exhibit 6.

³³ The two above-mentioned lawsuits, which were ultimately consolidated (*Friends of Oceano Dunes v. County of San Luis Obispo* and *Sierra Club v. State of California*).

³⁴ The Court ultimately found that it could not reach the merits of the La Grande property case because the lawsuits were challenging a proposed sale of the property at the time and did not request review of a specific agency action related to allowing continued use of the property for OHV. In the case of an agency *action* that would allow continued OHV use, those issues would become relevant and litigable on this very point.

and receive approval for that Local Coastal Plan amendment prior to approving the PWP”.³⁵ The underlying issue is, however, that these types of fundamental LCP inconsistencies cannot be resolved through LCP amendments that allow continued OHV use within ESHA due to core Coastal Act inconsistencies regarding ESHA protections. And, as indicated above, the existing LCP, including as understood based on recent court decisions (e.g., the *McAllister* decision mentioned above), directs that OHV use is *not allowed* at the Park under the Coastal Act and the LCP, notwithstanding any potential discrepancies which may have been part of the original LCP certification, and this creates a fundamental issue/constraint to State Parks’ OHV operations moving forward.

In sum, the changes required above in relation to the CDP (i.e., **Special Conditions 1 through 15**) are also necessary to begin to address LCP compliance issues, including particularly related to the Arroyo Grande Creek crossings changes (see **Special Condition 8**) and the required entrance study (see **Special Condition 11**). In addition, the Commission needs to provide direction to State Parks moving forward in light of all of the issues and constraints identified herein, and that too is an LCP compliance issue supporting the need to send such a letter (see **Exhibit 13**).

C. AIR QUALITY ISSUES

Dust emissions associated with ODSVRA are resulting in air quality problems inland of ODSVRA, including exceedances of State and Federal ambient air quality standards for particulate matter equal to or less than 10 and 2.5 microns in size, known as PM10 and PM2.5, respectively. The high particulate matter concentrations have resulted in what the San Luis Obispo County Air Pollution Control District (APCD) has deemed a “significant and ongoing public health threat” for the people living inland of ODSVRA, including in the Nipomo Mesa area. Between 2013 and August 2017, an APCD air quality monitor (often referred to as the CDF monitor or tower), located one-half mile east of ODSVRA near the residential community of Nipomo, has recorded two exceedances of the Federal daily PM10 standard,³⁶ 282 exceedances of the State daily PM10 standard,³⁷ and six exceedances of the federal daily PM2.5 standard. In addition, the federal and state standard for annual average emissions of PM2.5 is 12.0 $\mu\text{g}/\text{m}^3$, and monitoring indicates that this standard too has been exceeded twice in this same time frame. Federal and state standards have also been exceeded at the Mesa 2 monitoring station. Indeed, on certain days of the year, this area has the highest particulate matter concentrations and worst air quality *in all of the United States*.³⁸

³⁵ See San Luis Obispo County Counsel Rita Neal’s July 17, 2018 letter to State Parks.

³⁶ The federal daily standard for PM10 is 150 micrograms (one-millionth of a gram) per cubic meter of air (expressed as 150 $\mu\text{g}/\text{m}^3$), and the federal daily PM2.5 standard is 35 $\mu\text{g}/\text{m}^3$.

³⁷ The California daily standard for PM10 is 50 micrograms per cubic meter of air (50 $\mu\text{g}/\text{m}^3$).

³⁸ Including most recently on April 11, 2019, April 21, 2019, May 28, 2019, and June 7, 2019. On those dates, Nipomo had the highest Air Quality Index rating of combined particulate matter and ozone concentrations in the country, according to the United States Environmental Protection Agency (airnow.gov website).

Several studies have been performed to help better understand dust emissions associated with ODSVRA including by establishing causation between the measured dust emission exceedances and ODSVRA, as summarized below.

APCD Studies

In 2004, APCD conducted what is known as the Phase 1 study to determine the cause and extent of the elevated particulate matter concentrations recorded on the Nipomo Mesa. The study concluded that entrainment of dust by prevailing northwesterly winds from ODSVRA upwind of the Nipomo Mesa was determined to be the largest factor resulting in the high particulate matter levels. However, the data from the Phase 1 study was not conclusive as to whether OHV use within ODSVRA contributed to the high particulate matter levels. The results of the Phase 1 study were presented to APCD Board of Directors in 2007, at which time the Board directed APCD staff to conduct a second study.

Based on the information learned from the Phase 1 study, APCD conducted a second study to determine the role OHV activity plays with respect to the high particulate levels on the Nipomo Mesa, and/or whether the petroleum coke piles at the nearby ConocoPhillips Refinery complex were the cause. The findings of the Phase 2 study concluded that:

- The airborne particulate matter predominantly impacting the region on high episode days does not originate from an offshore source.
- Neither the petroleum coke piles at the Philips 66 facility nor agricultural fields nor activities in and around the area are a significant source of ambient PM10 on the Nipomo Mesa.
- The airborne particulate matter impacting the Nipomo Mesa on high episode days predominantly consists of fine sand material transported to the Mesa from upwind areas under high wind conditions.
- The primary source of high PM10 levels measured on the Nipomo Mesa is the open sand sheets in the coastal dune areas.
- The open sand sheets subject to OHV activity within ODSVRA emit significantly greater amounts of particulates than the undisturbed sand sheets at the study control sites under the same wind conditions.
- Vegetated dune areas do not emit wind-blown particles, and the control site dunes have significantly higher vegetation coverage than what is present in riding areas at ODSVRA.

The Phase 2 study concluded that OHV activity is a major contributing factor to the high particulate matter levels recorded on the Nipomo Mesa, and that the primary emissions causes were direct as well as indirect impacts associated with OHV use. Indirect OHV-related emission impacts stem from de-vegetation, dune structure destabilization, and destruction of the natural dune surface caused by OHV use. The study determined that these impacts increase the ability of the wind to entrain sand particles from the dunes. Direct OHV-related emission impacts, meaning those impacts associated with fuel combustion exhaust or dust raised by the vehicle moving over the sand, were also found to be a significant, if lesser, contributor to the elevated

PM10 levels. Based on the conclusions reached in the Phase 1 and 2 studies, and to address these air quality impacts, APCD adopted Rule 1001 in 2011.³⁹

APCD Rule 1001

APCD Rule 1001 (see **Exhibit 7**) requires DPR to monitor PM10 and implement appropriate mitigation measures to meet State and Federal air quality standards. Rule 1001 does not identify specific areas within the ODSVRA for dust mitigation, but rather is designed to be broad so as to target the specific areas shown to be highly emissive via continuing study and research. APCD Rule 1001 consists of the following key elements:

- A PM10 concentration comparison between monitors downwind of a riding area and downwind of a non-riding area. The Rule 1001 performance standard is that concentrations at the monitor downwind of the riding area must not exceed $55\mu\text{g}/\text{m}^3$ if the difference in PM10 concentrations at the two monitors is greater than 20%.
- A requirement to deploy monitors to provide the data necessary for evaluating dust dispersal and compliance with performance standards.
- A requirement that DPR prepare a Particulate Matter Reduction Plan (PMRP) for APCD approval specifying the mitigation methods that will be implemented to meet the Rule's performance standards.

Thus, among other things, Rule 1001 requires DPR to implement appropriate dust control measures as part of a PMRP aimed at reducing particulate matter and meeting the Rule's dust reduction requirements. The Commission approved a series of emergency CDPs (ECDPs) for a variety of dust control and monitoring measures between 2013 and 2016 (ECDPs G-3-13-0213, G-3-14-0007, G-3-15-0014, and G-3-16-0023) to facilitate State Parks' compliance with APCD requirements.⁴⁰

CDP 3-12-050

Ultimately, in 2017 the Commission approved CDP 3-12-050 to implement State Parks' proposed measures designed to comply with APCD air quality requirements, including Rule 1001,⁴¹ and applicable measures to be applied were last updated and approved by the Commission under that CDP in June of 2018. Specifically, CDP 3-12-050 approved a suite of

³⁹ Rule 1001 was the subject of litigation (*Friends of Oceano Dunes v. APCD* (San Luis Obispo County Superior Court Case CV12-0013)). Most recently, following initial Superior Court (2013) and Appellate Court (2015) decisions, and despite Friends of Oceano Dunes argument that Rule 1001 is entirely invalid, the Superior Court indicated on March 7, 2016 that APCD retains the power to enforce Rule 1001.

⁴⁰ The Friends of Oceano Dunes sued the Commission and DPR over issuance of an ECDP in 2016 for implementation of DPR's 2016 dust control and monitoring measures. Friends of Oceano Dunes also challenged the Executive Director's determination that no CDP was required for DPR's dust control measures in 2017. Both of these lawsuits are still pending.

⁴¹ The Friends of Oceano Dunes again sued the Commission over its action, in both San Luis Obispo County Superior Court and in federal court. Thus, the Commission has been sued by the Friends of Oceano Dunes four times since 2016 over the Commission's authorization of measures to facilitate State Parks' compliance with APCD requirements (three times in San Luis Obispo County Superior Court: Case Numbers 16CV-0160, 17CV-0267, and 17CV-0576; and once in federal court (the U.S. District Court for the Central District of California, Case Number 2:17-cv-8733). All of these lawsuits are still pending.

dust control measures, including planting a total of approximately 100 acres of dune vegetation); deploying approximately 40 acres of seasonal dust control measures (e.g., wind fencing) during the windy season (i.e., roughly from March to September each year) within the OHV riding area; and installing and operating monitoring equipment to evaluate dust abatement effectiveness. Such measures are intended to be developed in conjunction with the APCD and CARB, including to meet APCD Rule 1001 compliance and objectives. As part of the approval, the Commission required DPR submittal of an Annual Work Plan designed to identify the specific measures to be applied for any particular year, where such Plan was required to be submitted with evidence that APCD and CARB have reviewed the measures and consider them consistent with their requirements related to dust control at ODSVRA. Once reviewed and approved by the Coastal Commission's Executive Director, the Commission required that the Plan be reviewed by the Commission itself at a noticed public hearing, where the Commission can concur with the Executive Director's determination or it can modify the Plan as it deems necessary to ensure effective implementation of dust control and monitoring measures consistent with the CDP (including assurance of compliance with APCD and CARB requirements). Pursuant to that requirement, the Commission reviewed the 2018 Annual Work Plan in June of 2018, authorizing 104 acres of OHV riding area in the foredunes to be fenced off and vegetated over time.⁴²

As well documented by the APCD and the California Air Resources Board (CARB), and as affirmed by the Commission, including from the Commission's Staff Ecologist Dr. Laurie Koteen, significant particulate matter (or 'dust') is generated by OHV use on the dunes at ODSVRA, resulting in exceedances of State and Federal particulate matter standards for inland and downwind communities, including Oceano more broadly and along the Nipomo Mesa. In the Commission's 2017 approval of CDP 3-12-050, Dr. Koteen found:

Historical monitoring of air quality in the area of the Nipomo Mesa has revealed repeated episodes where State and Federal air quality standards for PM10 and PM2.5 have been exceeded, see Tables 1, 2 & 3. As a result, several research efforts were initiated with the goals of 1. identifying the source of excess particulate matter in local air masses; 2. understanding the physical processes that control and exacerbate particulate emissions; and 3. implementing mitigation measures to reduce particulate emissions. Phase 1 and 2 studies were completed in 2004 and 2010 respectively by the San Luis Obispo County Air Pollution Control District (the APCD), associated State agencies and the University of California, Davis. Their research directly attributed the excess particulate emissions to the open sand sheets of the Oceano Dunes State Vehicular Recreation Area (ODSVRA), which are located upwind of monitoring stations within the Nipomo Mesa. Several additional studies were subsequently commissioned by the California Department of Parks and Recreation (CDPR) and these studies largely confirm the APCD findings...

⁴² In addition to the 104 acres authorized per CDP 3-12-050's 2018 Annual Work Plan, the CDP recognized 29.2 acres previously vegetated pursuant to ECDPs, and 18.5 acres were vegetation authorized pursuant to CDP 4-82-300 in December 2017. Thus, through various CDP means, the Commission has approved 151.7 acres of dust control, and State Parks would need Commission authorization for an additional 348.3 acres to meet the current Stipulated Order of Abatement (see discussion that follows) based on the PMRP's current modeling. The PMRP's reference of 132 acres references the amount of acreage State Parks has to date actually closed off to OHV activity (i.e., they have not yet closed off 19.7 acres, even though they have Commission authorization to do so).

Given the evidence that the riding areas of the ODSVRA are the source of the particulate emissions recorded at the Nipomo Mesa stations, both direct and indirect mechanisms present themselves. Observational evidence indicates that OHVs directly inject fine particulates into the air via movement of tires over sand, and anecdotal evidence suggests that the higher number of OHVs driving on the northern regions of the ODSVRA explains the higher particulate emissions from this area relative to other riding areas. Although data are lacking for ridership per area of the ODSVRA, most or all of the camping occurs in the northern La Grande Tract region, and higher vehicle use is associated with the camp sites.

The most likely indirect method involves the destruction of vegetation and surface soil structure by OHVs. As is evident in Table 4, the presence of vegetation provides by far the most stability to sand dunes and the least amount of particulate generation. Unvegetated areas that are not subject to OHV use require higher wind speeds to mobilize particulates than do riding areas. The difference appears to be a result of OHVs disrupting the fine structure of the sand surface...

Of particular interest are the results that were generated in the snowy plover enclosure area, also evident in Figure 3. Every year, a roughly 300 acre area is cordoned off during the snowy plover breeding season, and riding is excluded from the plover enclosure area over that time period. The emissions generated from PI-SWERL measurements taken during the enclosure period are markedly lower than emissions generated from areas where riding is continuous (0.024 – 0.13 mg.m⁻².s⁻¹ in the plover enclosure zone vs. dust fluxes more commonly equaling 0.4 – 2.8 mg.m⁻².s⁻¹). These results imply that the emissivity of areas where riding is excluded reduces fairly rapidly once riding ceases, and suggests that simply excluding riding from highly emissive areas by cordoning areas off with perimeter fencing, as has been suggested by the APCD, can be an effective strategy towards reducing particulate emissions.

Thus, Dr. Koteen confirmed the findings of previous research that found: 1) the primary source of dust is the OHV riding area within ODSVRA; 2) OHV use is the primary cause of such dust, including due to OHV-caused direction injection of fine sand particulates into the air, loss of vegetation that mitigates sand movement, and destruction of typical dune surface structure that results in a more emissive dune; and 3) replacing OHV riding areas with vegetation, or simply cordoning off such areas with fencing, can result in significant dust emission reductions.

APCD/State Parks Stipulated Order of Abatement

More recently, and based on APCD/CARB assessments that State Parks' efforts to date were not resulting in adequate dust reduction, State Parks and APCD entered into a Stipulated Order of Abatement (SOA) (in 2018, as modified in 2019) to identify and implement additional measures needed to reduce dust related to vehicular activity at ODSVRA. The SOA specified new dust reduction requirements that State Parks must meet within a four year period between 2019 to 2023. Namely ODSVRA must: 1) meet State and Federal Daily PM10 levels at downwind air monitors; and 2) reduce daily baseline PM10 emissions by 50% from 2013 levels. In June of 2019, APCD approved State Parks' PMRP that was developed to meet these SOA requirements. Notably, the modeling from the PMRP suggests that roughly 500 acres of OHV riding area, or roughly *one-third of the current riding area* of 1,500 acres, may need to be permanently closed

off to all OHV riding activity and revegetated in order to get close to, but still not meet, the SOA. The PMRP states:

As shown in Table 5-8, the installation of approximately 500 total acres of dust control measures (including approximately 132 acres of existing dust control measures) is predicted to make demonstrable progress towards reducing the 2013 maximum 24-hour PM10 baseline emissions by 50%. This amount of dust control, assuming 100% control effectiveness, would reduce May 22, 2013 maximum baseline emissions by approximately 36% (based on emissions from the entirety of Oceano Dunes SVRA) to approximately 47% (based on emissions from the SVRA's open riding and camping area), and even more so if the results are expanded to emissions reductions averaged over the 10 highest emissions days from the 2013 baseline period. To achieve these estimated reductions, the OHMVR Division would need to install approximately 369 additional acres of dust control measures, namely vegetation. Any future proposed dust control measures would need to be in compliance with applicable statute and permitting requirements, and be evaluated for potential environmental impacts in compliance with CEQA. The 369 additional acres estimate is likely to be a minimum value, as the actual size and success of future dust control projects would depend on topography, planting success, etc. Furthermore, while the modeling indicates substantial progress would be made, the predicted emissions reductions are below the objective set by SOA Condition 2.c. In light of this, the OHMVR Division, the SAG, and the SLOAPCD will need to carefully consider the use and application of resources towards meeting this SOA objective. Refer to Chapter 6 for details on the OHMVR Division's ability to support the extensive vegetation planting contemplated by the PMRP sensitivity analysis. The OHMVR Division, the SAG, and the SLOAPCD may also need to carefully consider and establish appropriate increments of progress towards reducing 2013 maximum 24-hour PM10 baseline emissions by 50%.

The Scientific Advisory Group, an entity formed pursuant to the SOA to review and comment on all technical air quality matters and recommendations, recommended the APCD approve the PMRP, but with caveats, including directing State Parks to restore the foredune areas immediately:

However, other SAG technical comments are not addressed in the Revised PMRP. For example, the SAG Response Report proposed a detailed strategy for the implementation of foredune restoration. However, a detailed foredune restoration strategy appears to remain wholly lacking in the Revised PMRP, despite a detailed strategy presented in the SAG Response Report (Section 7.1). SAG reiterates the urgency of moving forward immediately on the creation of the foredune restoration enclosure referred to in Section 6.2.1 in the PMRP and the required initial planting strategies. The SAG notes that the extent of the hypothetical foredune polygon shown in Section 6.2.1 of the PMRP (~23 acres) was identified solely for sensitivity analysis in the modelling of potential dust control measures. In comparison to nearby natural analogue reference sites at Oso Flaco Lake, however, the SAG believes that the extent of this polygon is insufficient to promote the development and restoration of a naturally functioning foredune ecosystem, would likely occupy approximately 48 acres (see Section 7.1 of the February 25 SAG Response

Report). The SAG recognizes, however, that this initial 23 acre polygon is an important first step in the foredune restoration process and that future adaptive management decisions may necessitate expanding this zone based on monitoring and assessment of foredune development and related sand flux and dust emission mitigation performance. The SAG stresses that foredune development and restoration is a critical mitigation measure that could take several years to reach full effect. Exclosure of this initial restoration area should begin immediately.

In short, the most recent modeling indicates that even closing off 500 acres (or about 350 acres of additional OHV riding area that hasn't already been authorized by the Commission through the CDP 3-12-050 process for closure/vegetation) of existing OHV riding area may still not meet all applicable dust control reduction requirements. And the most effective and important measures, namely closing off foredune areas and other areas of high emissivity to OHV activity since these areas are where particulate matter is most generated should begin immediately, including as these same measures have an independent coastal resource protection and enhancement utility (i.e., protection of dune habitat). Again, Dr. Koteen concurs with this approach, and finds that even simple exclusionary fencing to demarcate foredune areas as off-limits to OHV use would stop dust generation at its source and should both significantly help to reduce dust at the same time as better protect sensitive coastal dune resources, all in a less expensive and less-time consuming manner than full dune revegetation, the latter of which could be undertaken over time as resources become available.

To help expedite deployment of State Parks' proposed (and APCD/CARB-approved) dust control measures as specified in the PMRP, **Special Condition 13** is included. This condition carries over the Commission's dust control authorization protocols from CDP 3-12-050, including allowing APCD-approved dust control mitigation measures (e.g., dune vegetation, wind fencing, and basic fence cordon) in an amount (up to 350 acres as being potentially needed pursuant to the PMRP) and configuration that will not adversely impact coastal resources, including habitat for ESA-listed species. Prior to any specific proposals being implemented, State Parks will submit the proposed work to the Executive Director for review and approval, including with evidence that such proposed work is consistent with APCD and CARB's air quality requirements, if any. This way, the necessary work for dust control abatement can be proactively authorized via this CDP.

The dust emissions produced at ODSVRA and adversely affecting downwind communities is a serious public health issue that in some ways compels more immediate action than many of the other issues and constraints at ODSVRA, and needs effective and timely resolution in the short term. The fact is that dust control activities are also habitat protection activities that have an independent utility under the Coastal Act as well, and that also compel their application, including through the Commission's authorities associated with the base CDP review. The fact that Rule 1001 was adopted in 2011 but the air quality problem remains acute almost a decade later speaks volumes to the need for change at ODSVRA. These aforementioned APCD/air quality issues are particularly relevant with respect to re-review of CDP 4-82-300 because of the CDP's primary purpose in understanding and evaluating sustainable use, including with respect to appropriate vehicular carrying capacity, and the way such use affects coastal resources, including significant and sensitive of dune resources. Clearly, the current amount of OHV use,

just based on air quality impacts alone, but also in terms of the corresponding effect on coastal resources, is not sustainable nor meeting the CDP's objectives.

The Commission notes that the additional areas potentially contemplated to be removed from OHV use for dust control purposes, some 350 acres, are appropriate to be so removed given the issues and constraints affecting OHV use of the Park, and are also appropriate given the Coastal Act explicitly requires that its public access provisions "be implemented in a manner that takes into account the need to regulate the time, place and manner of public access" depending on, among other things, "the capacity of the site to sustain use and at what level of intensity," and the need to potentially limit access "depending on such factors as the fragility of the natural resources in the area" (Section 30214). In other words, that particular type of access use can be reduced, and doing so better achieves Coastal Act objectives (see also Commission findings for CDP 3-12-050, which are incorporated herein by reference).

In short, ODSVRA vehicular activities have been and are resulting in a significant and continuing public health air quality hazard in the area inland of ODSVRA, notwithstanding measures taken to date to combat these issues, and it appears clear that Park operations must be significantly adjusted for this reason, including in the very short term (as in the next few months). Such changes have independent utility towards meeting the CDP's coastal resource objectives, and should be prioritized for this reason as well. The reality of the effects of the ODSVRA's OHV use on public health, including in relation to dune resource degradation associated with same, is a fundamental issue/constraint to State Parks' operations moving forward and similarly suggests that the status quo is simply not sustainable. In addition, the Commission needs to provide direction to State Parks moving forward in light of all of the air quality issues and constraints identified herein, and that too supports the need to send such a letter (see **Exhibit 13**).

D. RARE AND ENDANGERED SPECIES AND HABITAT ISSUES

Background

As previously stated above, and despite ongoing OHV and vehicular use, ODSVRA represents a rich coastal resource area, and it has been designated as an environmentally sensitive habitat area (ESHA) by the Coastal Commission in the certified LCP, which designation has been affirmed by the Commission countless times since then through its CDP actions and annual reviews. In fact, ODSVRA is part of a larger and significant and sensitive ecological system, the Guadalupe-Nipomo dunes complex, that has been identified as critical habitat for the threatened Western snowy plover, and supports other sensitive and listed species including the California least tern, Steelhead trout, and Tidewater goby. Although the California and State Endangered Species Acts (ESAs) are directly administered by other resource agencies, the Coastal Commission has an independent authority under the Coastal Act to protect coastal resources generally, and ESHA specifically. In discharging this responsibility, the Commission has in the past found that ESA-listed species and their habitats are protected as ESHA, including listed species habitat that are present at ODSVRA. Thus, in addition to the fact that the LCP designates the entirety of ODSVRA as ESHA, and the fact that this has been affirmed multiple times by subsequent Commission determinations in relation to various actions relating to ODSVRA, the Commission

also affirms that the ESA-listed species and their habitat present at ODSVRA all constitute ESHA.

The terms and conditions of the base ODSVRA CDP recognize this fundamental Coastal Act concern as it relates to these sensitive coastal resources, and its provisions for review and adaptation reflect the need to reevaluate ongoing operational and management measures to ensure ongoing Coastal Act and LCP consistency. That is not to suggest that the Commission is somehow attempting to administer the ESA, as some have suggested. Instead, the Commission is exercising its well established role for protecting ESHA, including as has been long and frequently been upheld by the Courts with respect to Section 30240 of the Coastal Act. In other words, the development regulated by the CDP (including physical development as well as changes in the intensity of use of land resulting from Park's ongoing management of vehicular use) has impacts to significant coastal resources (including ESHA) which also have independent significance under the California and Federal Endangered Species Act. However, consideration of the coastal resources under those regulatory frameworks is relevant and necessary to their consideration under Coastal Act ESHA protection policies (Section 30240) because, as supported by past Commission decisions, the significance and status of habitat or species as special-status under the State or Federal ESA may (and often likely will) justify the status of that habitat or species as ESHA (taking into account the Coastal Act definition of ESHA) for substantially similar reasons that it is designated special-status under the State or Federal ESAs.

Significant concerns have been raised over the years regarding the manner in which ESHA is being protected at ODSVRA. Protection of ESHA is the most significant issue contemplated by the CDP as amended, and represents the crux of the conflict regarding vehicular use at ODSVRA. Such issues are exacerbated by the fact that the Park includes significant habitat for a series of ESA-listed and other sensitive species, both located in and out of the vehicular riding areas. The fact that DPR has been unable to complete a Habitat Conservation Plan (HCP) pursuant to the federal ESA, only amplifies concerns about habitat protections, particularly related to Western snowy plover, California least tern, Steelhead trout, California red-legged frog, and Tidewater goby.⁴³

DPR's Sensitive Species Management

At the same time as there exist significant challenges in protecting listed species, State Parks has also committed significant resources to its habitat protection program at ODSVRA. For example, CDFW works closely with DPR on its plover and tern habitat protection programs. Since DPR does not have authorization to take any listed or threatened species (and since CDFW is not allowed to authorize any take for California least tern except for authorized research pursuant to its designations as endangered under the California ESA and as Fully Protected under Fish & Game Code Section 3511), CDFW routinely works with DPR to ensure that protective measures are in place to avoid and limit take as much is possible in an environment where vehicles are driving over habitat areas. Each year, DPR provides to CDFW and USFWS a "Nesting Season Management Plan to Avoid Take of the California Least Tern (CLT) and Western Snowy Plover at Oceano Dunes State Vehicular Recreation Area". The Plan each year states "...DPR believes

⁴³ California least tern are listed as an endangered species under both the Federal and State Endangered Species Acts, Tidewater goby are listed as endangered under the Federal Endangered Species Act, and Western snowy plover, California red-legged frog, and South Central Coast steelhead trout are federally-listed as threatened.

that it can continue to operate the SVRA and provide protection (attempting no take) of the listed species through the implementation of various protections, monitoring, and management measures as described...”. The Plan then identifies a number of protective measures to guard against take of plover and tern, measures which are based on prior biological opinions and previous years’ Plans. These measures include buffers around nests (a minimum of 100 meters), fencing requirements, and restrictions on vehicular activity at night.

In addition, since its inception via the amended CDP, a primary TRT and Scientific Subcommittee research task has been to study appropriate management techniques for snowy plover, least tern, steelhead trout, and tidewater goby (as specifically required per Special Condition 5(a) of the CDP’s fifth amendment; see **Exhibit 4**). As part of this research, the TRT reviews and comments on the annual *Nesting of the California Least Tern and Western Snowy Plover at Oceano Dunes State Vehicular Recreation Area* report, prepared by DPR staff. Recent nesting reports have shown that the ODSVRA fledge⁴⁴ rates for both plover and tern have generally been above USFWS’s recovery goal of one fledged chick per adult male. The 2014 nesting report, as summarized by the TRT’s annual report, generally also echoes such findings:

WSP had a good hatching success with 82.6% (compared to an 77.8% hatch rate for 2013), and a chick fledging success rate of 35.8% (compared to a 55.4% fledging rate for 2013 and a 25.0% fledging rate for 2012). The WSP fledge rate was an estimated 1.63 juveniles fledged per male, exceeding the U.S. Fish and Wildlife Service (USFWS) recovery goal of one fledged chick per adult male but falling below the previous year’s rate of 2.03. CLT had a 2% decrease of breeding pairs from the 2013 season with a minimum of 47 pairs compared with 48 in 2013. Fifty-eight of the 76 chicks fledged for a rate of 76.3% and 1.23 chicks fledged per pair.

The report further found that the Oceano Dunes area has seen “remarkable growth” in the adult plover breeding population, but least tern breeding numbers remain flat for unknown reasons.

DPR also performs numerous management measures to aid in sensitive species’ protection. For example, DPR fences off a designated area during the March through September least tern and snowy plover nesting season. This area, called the southern enclosure, is a roughly 300-acre protected area closed to public entry, including for OHV use, for those seven months. In addition to this designated area, DPR indicates that it also fences off any least tern or snowy plover nests found in the open riding area. Single nest enclosures of differing sizes may also be used to protect snowy plover nests in areas where vehicles are not permitted (e.g., the Oso Flaco Lakes area).

Recent Resource Agency Concerns

However, because of the complicated and dynamic natural environment at ODSVRA, including containing dunes, wetlands, creeks, and beaches, all of which are habitat for multiple listed species, the manner in which DPR manages habitat function is not without resource protection concern. Additionally, sensitive species are harmed at ODSVRA due to the interim operational

⁴⁴ For Western snowy plover, a chick is considered “fledged” if it survives to 28 days; for California least tern, 21 days.

and management parameters set forth in the CDP, and continuing habitat impacts raise concerns with respect to Coastal Act and LCP consistency of continuing these interim parameters. For example, a March 29, 2016 USFWS letter informed DPR that three snowy plovers were killed by vehicles over the preceding 30-day period (see USFWS letters in **Exhibit 10**). The letter reiterated that DPR does not have take authority. The letter goes on to state:

*State Parks has been developing a Habitat Conservation Plan (HCP) as part of an application for an Incidental Take Permit from the U.S. Fish and Wildlife Service (Service), while at the same time implementing measures intended to avoid impacting federally-listed species, particularly, the western snowy plover and the federally endangered California least tern (*Sterna antillarum browni*). However, as evidenced by the recent mortalities, as well as other mortalities of both western snowy plovers and California least terns that have occurred since 2001, the measures being implemented are not adequate to fully avoid take, and thus violations of the section 9 take prohibitions of the Federal Endangered Species Act continue to occur.*

The letter concludes by stating that “violations cannot continue”, and that the way to ensure compliance with the ESA is to both complete the HCP process (discussed below) as quickly as possible, and to institute enhanced avoidance and minimization measures to avoid take, including potentially reduced speed limits and better enforcement of existing limits, additional beach closures, and cessation of special events. Since this letter’s issuance, USFWS indicates that there have been three more plover mortalities caused by vehicle activity.⁴⁵

In addition, while CDFW reviews and approves the previously discussed yearly plover and tern management plans as including sufficient measures to avoid take, take does occur, including as evidenced by seven documented California least tern deaths in 2014. Further illustrating this issue, in a March 3, 2016 CDFW letter, CDFW indicates that over the past fifteen years there have been 10 documented incidents of take of California least tern (see CDFW letters in **Exhibit 8**). The letter concludes that the proposed 2016 Nesting Plan for least tern “reduces previous protections for CLT at ODSVRA.” The letter goes on to state that two additional measures provided in guidance letters to DPR in 2002, 2004, 2006 and 2015 should be incorporated. The letter concludes that implementation of the measures identified by DPR in addition with measures supplied in the letter “will result in take of CLT at ODSVRA being unlikely.” However, it is difficult to avoid all take at a large vehicular recreation area such as this, and it may be that take occurs on a regular basis that is not recorded, documented, or otherwise addressed.

Arroyo Grande Creek Crossing Issues

As discussed previously, all vehicles must cross Arroyo Grande Creek to access the riding and camping area. While the creek does not flow year-round, when it does flow, the only way to access the riding area is to cross directly through the creek, which provides habitat for Steelhead trout and Tidewater goby. DPR indicates that it currently limits vehicle crossing of the creek when it is flowing, and that DPR provides drivers with a memo stating “it is prohibited to cross Arroyo Grande Creek in any other manner than by crossing the creek as close to the ocean

⁴⁵ See USFWS letter dated December 22, 2016 in Exhibit 8.

waterline as possible and parallel to the ocean waterline. Driving upstream or downstream in the creek channel or in any other manner in the creek channel is prohibited. If the creek crossing is posted 'closed', crossing the creek is prohibited." According to DPR, the creek is typically closed to crossing when its depth would extend above the axles of vehicles attempting to cross.⁴⁶ NOAA fisheries is also working with DPR to address issues concerning Steelhead trout and Tidewater Goby in relation to vehicles crossing Arroyo Grande Creek. In an email to DPR dated December, 16, 2016, NOAA Fisheries informed DPR of a desire to revisit NOAA's 2008 letter regarding take of Steelhead trout, and discuss the possibility of incorporating seasonally-specific minimizations measures for vehicle crossing of the Arroyo Grande Creek during times when the creek breaches the sandbar and flows to the ocean, a time when steelhead are more likely to be using the creek while vehicles are still allowed to cross the creek.

Dr. Koteen has documented significant concern with the vehicular creek crossing allowance and the impacts it has on creek health. Each year when winter rains cause the breaching of Arroyo Grande Lagoon, a direct connection with the ocean is forged through the extension of Arroyo Grande Creek to the ocean edge. The federally threatened Central Coast steelhead exhibits an anadromous life cycle, meaning that they migrate from the creek to the ocean each year, but return to the creek for a portion of their life cycle and to spawn. Therefore, the integrity of the connection between the creek and the ocean is an important one for the portions of the year that it exists.

At past annual CDP review hearings, videos have been shown that were captured by visitors to the ODSVRA in which OHVs were seen to be driving through Arroyo Grande Creek at a variety of depths (sometimes being washed into the ocean), and also breaching the banks of the creek in such a way that caused the creek banks to erode considerably and to widen and lose the shape that contained and directed creek flows. Not only do the vehicles driving through the running creek raise concerns (regarding directly impacting listed and other species, and creek water quality, from large vehicles driving through the creek itself), but its morphology is changed to the detriment of natural processes as well. Vehicles crossings cause the creek to widen and meander beyond the area delineated by creek waters, and such destruction of creek banks has the effect of expanding and altering the creek bed in ways that reduce the water depth and limit the time period over which migration between the creek and ocean is viable for fish species, perhaps reducing their ability to occupy the creek and to reproduce. Moreover, any OHV use in the vicinity of the Arroyo Grande Lagoon that impacts its mouth and causes it to breach precipitously and rapidly, such as through such creek morphological changes, may impact the federally endangered tidewater goby. Tidewater gobies spent most of their life cycle in coastal lagoons and in the lower reaches of coastal creeks where they naturally reside in low flow, low salinity refugia and spawn year-round in sandy sediments. Any disturbance that causes rapid lagoon breaching may have the effect of flushing tidewater goby from the lower reaches of the creek into the ocean and cause their demise. California red-legged frog may also be present

⁴⁶ However, in general, Steelhead trout can be found to move upstream during flows as shallow as six inches, which is lower than some vehicle axles. And it is not clear with what frequency DPR staff is present at the Arroyo Grande Creek during times of flow to enforce the rules regarding crossing the Creek. In addition, because vehicles can enter and exit the Park after hours, and because DPR is not able to monitor crossing at all times, there may be more inappropriate crossing than has been identified to date.

around Arroyo Grande Lagoon and Creek during this time period, and others, and the frogs themselves, as well as their egg sacs may also be harmed by a precipitous breaching event.

Therefore, during the time of year when rain water has elevated the banks of Arroyo Grande Creek and breaching is likely, all vehicular use should be prohibited from the lagoon mouth area, and vehicle should not be allowed to the south where they may be ‘trapped’ on the southern side of the flowing creek. In fact, DPR should institute measure to ensure Park users are provided time to exit the Park before the Creek flows. Thus, in light of the coastal resource problems associated with vehicular crossings of Arroyo Grande Creek, including impacts on listed fish species, pollution from vehicles, and overall degradation of stream morphology and structure from vehicle tracks through stream banks and breaching, **Special Condition 8** prohibits such vehicular crossings. Specifically, the condition prohibits all non-emergency vehicular crossings through Arroyo Grande Creek, and prohibits all OHV and camping operations while the creek flows to the ocean. State Parks must regularly monitor the creek so as to ensure that users are not allowed to the southern side of the creek area when the creek may soon connect to the ocean, and so as to provide time for users then south of the creek area to exit the Park before it will connect to the ocean.

Southern Exclosure

As described above, currently DPR fences off the southern exclosure area to protect listed species and their habitat from March through September. However, for the five-month period from October through February, the southern exclosure area is open to public use, including camping, street-legal vehicles, and off-highway vehicles. This recreational use results in large areas of flattened terrain and barren sand with very limited scattered natural debris and vegetation. The TRT’s Scientific Subcommittee has annually recommended that, at a minimum, the southern exclosure area’s fencing needs to be extended at least 100 feet inland in order to improve shoreline habitat, noting that there was an increase in plover and tern nests in the years 2012 to 2014 when compared with 2011, likely a result of fence movements at that time. Moving the fence eastward and extending the exclosure area should have similar benefits for snowy plover productivity. Therefore, the Scientific Subcommittee has recommended that the southern exclosure fence be moved inland at least 100 feet of its typical location.

For many years, the TRT’s Scientific Subcommittee has consistently recommended that DPR study whether a year-round closure of a designated area within the Park would improve plover and tern habitat quality and productivity. Specifically, the Subcommittee has focused on making the southern exclosure permanent. Essentially, the Subcommittee has concluded that habitat nesting quality is potentially compromised due to the fact that a seven-month closure and the subsequent five-month use period may not allow enough time for the habitat to recover from OHV use. DPR has not to date implemented that recommendation, nor has the Commission required it via past CDP reviews. State Parks has repeatedly stressed that such a closure is not appropriate given that the riding area has historically been reduced. Specifically, DPR suggests that the size of the riding area has been reduced from some 25,000 acres historically to less than 1,500 acres today, in large part to protect sensitive habitats. DPR’s 2014 annual report states “the park believes it is having good results with the current management program”, while also stating that any additional closure of the Park to OHV use would be inconsistent with its legislative mandates to provide for vehicular riding and its management goals of providing public recreational opportunities. Therefore, DPR has not been supportive of the proposed year-round

closure for snowy plover and least tern habitat protection. At its core, State Parks' position is not that the closure wouldn't benefit ESA species and their habitat, rather that it would reduce OHV areas. However, these same riding activities in this area are adversely affecting listed species, which supports closure.

Further, while ongoing research and management of plover and tern habitat protections is a principal concern of the CDP due to ongoing impacts vehicular use on these coastal resources, additional analysis as part of a year-round enclosure *study* is not warranted in this case, but rather implementation of it. On a basic level, it can be reasonably concluded that designating a particular area off limits to vehicles year-round would effectively help to enhance its habitat, including by ensuring that the habitat is allowed additional restoration time. Dr. Koteen finds that making the enclosure permanent and slightly expanding it to inland and to the south will improve plover habitat. Specifically, she finds that there are a large number of plovers found in areas outside of the enclosure, including 15 that were found dead in 2018 (8 of which were found crushed next to tire tracks). Because plovers naturally seek to avoid encounters with humans,⁴⁷ the presence of a refuge away from human pressures, particularly OHV riding, would reduce plover loss during the overwintering season, from October through February of each year, when the enclosure is currently open to OHV activity.

Further evidence that the southern enclosure is not large enough for the current plover population is the very large number of nests, 66 in 2018, found outside, but adjacent to the southern enclosure. Plovers frequently nest between the westward edge of the enclosure and the ocean and in areas south of the enclosure, known as Oso Flaco south. In recent years these areas have been cordoned off from OHV riders with symbolic fencing. However, this fencing does not exclude mammalian predators, which Dr. Koteen suggests should be replaced with fencing similar to enclosure fencing. The fencing currently used on the enclosure should also be fortified to reduce the number of predators that gain access despite even with the fencing in place. As such, she suggests making the enclosure permanent, slightly expanding it inland and to the south, and adjusting the western edge as well, to encompass known breeding areas, and to ensure that fencing is suitable for predator management. Thus, a series of conditions implement these recommendations, namely **Special Conditions 1, 3, and 12**, which all will help increase needed sensitive habitat protections. And all of these provisions need to be addressed through better enforcement of same (see **Special Condition 2**).

Nighttime Vehicular Use

Currently, there are no time limits for OHV use, and in fact vehicles do operate into the night. However, according to the Commission's Senior Ecologists, night driving on dunes and beaches likely cause serious adverse impacts to the native plant and animal inhabitants from artificial night light and noise. Headlights and motorized vehicles make a lot of noise and artificial night light and noise introduce extreme disturbances to the night-time environment. Given that dune and beach driving is allowed during the day at ODSVRA, night-time is the only reprieve from disturbance for organisms living in this area.

⁴⁷ Lafferty KD. 2001. Disturbance to wintering western snowy plovers. *Biological Conservation* 101:315-325.
Lafferty KD, Goodman D, Sandoval CP. 2006. Restoration of breeding by snowy plovers following protection from disturbance. *Biodiversity and Conservation* 15:2217-2230.

The pivotal role of light (electromagnetic radiation) in organismal biology raises the potential that there will be significant impacts on plants and animals from artificial night lights. The source of natural light is the sun, moon, and stars. Light is used by plants and animals to infer a wide range of information from their environment. One of the most important roles of light for both plants and animals is regulation of their biological clocks or circadian rhythms on a daily, weekly, seasonal, and annual basis. Light information that contributes to the establishment of circadian rhythms includes daylength, light intensity, and light wavelength. In animals, eyes ranging from very simple to complex are the organ that collects light from the environment. Animals typically fall into one of several patterns of activity. Diurnal animals are active during the day; nocturnal animals are active at night; crepuscular animals are active at dawn and dusk; and 24-hour pattern animals have activity bursts during the night, dawn, and dusk. While humans are diurnal in nature, most other mammals are nocturnal (e.g., 80% of primates and all bats are nocturnal), crepuscular (e.g., rabbits, rodents), or have a 24-hour pattern where they are most active at night, dawn, and dusk (e.g., ungulates, large carnivores, some smaller carnivores).⁴⁸ Thus daily behavioral activities such as sleeping, foraging, eating, moving, and resting occur at different times for different animals such that a single habitat is partitioned into temporal niches regulated by light. Most predators are specifically adapted to hunt under particular light conditions (including in terms of intensity and wavelength) and in most natural habitats, there is a distinct “changing of the guard”, from a suite of animals that are active during the day to a suite of animals that are active at dusk or dawn and/or at night.

Introducing artificial night lights, such as those from nighttime vehicular activities more generally as well as OHV specifically, to an area will change the ambient setting and may adversely impact animals. Likely effects of artificial night lighting on mammals include avoidance, disorientation, disruption of foraging patterns, increased predation risk, disruption of biological clocks, increased mortality on roads, and disruption of dispersal movements through artificially lighted landscapes.⁴⁹ Adding light to the night environment can range from a moderate disruption to a significant risk to survival. An important fact is that the time when night lighting is most important to humans (i.e., the hours at and just after dusk and just prior to dawn) are the same hours when changing natural light levels are critical to many animals. The majority of activity of many nocturnal and all crepuscular animals tends to occur during these hours.⁵⁰ Nocturnal animals, as the name implies, are active during the night. This means they conduct their business under varying darkness levels including under clear starry skies with an illuminance value of 0.001 foot-candle (fc)⁵¹ as well as under overcast night skies with an illuminance value of 0.0001 fc.⁵² And under a full moon (0.01 fc), nocturnal animals change

⁴⁸ Rich, C. & T. Longcore (Eds.) 2006. *Ecological Consequences of Artificial Night Lighting*. Island Press, Washington. 458 pgs.

⁴⁹ Id (Rich and Longcore 2006).

⁵⁰ Gaston, K.J., T.W. Davies, J. Bennie & J. Hopkins. 2012. Reducing the ecological consequences of night-time light pollution: options and developments. *Journal of Applied Ecology*. v. 49:1256-1266

⁵¹ A foot candle is a measurement of light intensity and is defined as the illuminance on a one-square foot surface from a uniform source of light.

⁵² Id (Rich and Longcore 2006).

their activity patterns, prey species stay under cover, and predator species do not actively hunt as much.⁵³

Noise or sound, just like the availability of food, plays an important role in an ecosystem. Activities such as finding desirable habitat and mates, avoiding predators, protecting young, and establishing territories are all dependent on the acoustical environment. A growing number of studies indicate that animals, like humans, are stressed by noisy environments.⁵⁴ For example, the endangered Sonoran pronghorn avoids noisy areas frequented by military jets; female frogs exposed to traffic noise have more difficulty locating the male's signal; gleaning bats avoid hunting in areas with road noise.⁵⁵ When these effects are combined with other stressors such as drought, disease, and food shortages, noise impacts can have adverse impacts on the health and vitality of wildlife populations.⁵⁶

At ODSVRA all of these issues are in play with night lighting and noise. The listed species here are all more vulnerable to the impacts identified above at night, and to the degree that such activities harm such species, that is considered ESA-take. For all of these reasons regarding the impact night lighting and noise potentially has on such species, many environmental groups have asked the Commission to prohibit vehicular activity at night, including to allow for a biological respite from such activity. As such, **Special Condition 7** prohibits all vehicular activity, including OHV activity, at night (i.e., from one-hour after sunset to one-hour before sunrise).

HCP

DPR has been in the process of developing a HCP for ODSVRA for nearly 20 years. The HCP is required by the USFWS for the protection of listed species at ODSVRA, such as the Western snowy plover, California least tern, steelhead trout, California red-legged frog, and tidewater goby. The primary purpose of the HCP is to ensure that park management, maintenance, and development activities protect these threatened and endangered plant and animal species consistent with the federal and state Endangered Species Acts. According to DPR, the draft HCP should be available for public review this summer (there has not to date been a publicly available review draft of an HCP ever). However, as evidenced by this report, the long-awaited HCP may be immediately in need of revision, even if it were to be adopted in the shorter term. Critically, and as detailed earlier, many of the key ODSVRA operational parameters, most notably in terms of access into the Park and overall use limits, have never been finalized through the required CDP amendment and LCP amendment processes, and thus they are currently authorized through the CDP on an interim basis only. In addition, the CDP authorizes the Commission to review State Parks' operations on an annual basis and to identify necessary changes, particularly related

⁵³ Id (Rich and Longcore 2006).

⁵⁴ Shannon, G., M.F. McKenna, L.M. Angeloni, K.F. Crooks, K.M. Fristrup, E. Brown, K.A. Warner, M.D. Nelson, C. White, J. Briggs, S. McFarland & G. Witemyer. 2016. A synthesis of two decades of research documenting the effects of noise on wildlife. *Biological Reviews*. v. 91: 982-1005.

⁵⁵ Ware, H.E., C.J.W. McClure, J.D. Carlisle, & J.R. Barber. 2015. PNAS Online. A phantom road experiment reveals traffic noise is an invisible source of habitat degradation. <https://pdfs.semanticscholar.org/4553/85667d9a2568fcb39e0ca29c1991b289ca78.pdf>.

⁵⁶ Barber, J.R., K.R. Crooks, & K.M. Fristrup. 2010. The costs of chronic noise exposure for terrestrial organisms. *Trends in Ecology & Evolution*. v. 25: 180-189.

to addressing potential habitat impacts due to vehicular use. It is not clear how the HCP would be able to address the 'adaptive management' nature of the CDP authorization and the potential for State Parks' operations to change over time to respond to coastal resource considerations, including in relation to the annual Commission reviews. Critically, in proposing to evaluate State Parks' current operations, it is not clear how the HCP intends to address the issues associated with the need for State Parks to finalize certain critical aspects of its operation that are only authorized on an interim basis under the CDP, including Park access and overall use limits. These current interim parameters directly relate to potential ESA species issues, and thus the lack of finality through the CDP and the LCP processes must somehow be addressed in any proposed HCP. It is not clear whether or how the HCP will account for these considerations regarding State Parks operational and management parameters which must be addressed through CDP compliance.

In addition, State Parks is also currently proposing to undertake a more holistic analysis of ODSVRA operations and its potential permanent configuration via a Public Works Plan (PWP). According to State Parks, the goal of their proposed PWP is to take a fresh look at ODSVRA management and operations, including identifying permanent access and staging areas, identifying where OHV riding and camping are and are not allowed (including to reduce particulate matter emissions on downwind communities in conjunction with efforts of the APCD and CARB), and other coastal resource protection requirements. In other words, the PWP process currently being undertaken by State Parks may materially affect the way in which ODSVRA is used, managed, and operated, including with respect to areas where recreational use and other covered activities are located. In addition, if the PWP is to replace the underlying base operational CDP, as State Parks intends, then it will need to resolve issues still outstanding with respect to CDP compliance, including in relation to the interim nature of certain key ODSVRA provisions.

Therefore, at a broad level, it is unclear how the proposed HCP will be structured in relation to the interim nature of ODSVRA's operational and management parameters under the CDP at this time in light of the need to update and finalize these parameters through CDP/LCP/Coastal Act compliance vehicles (including CDP and LCP amendment's), including how the HCP's resource protection requirements will be able to address different Park configurations, operations, and use levels than the current status quo. The ultimate location and delineation of the final ODSVRA entrance and staging areas, and its overall use parameters, under the CDP and the LCP would affect covered species differently, and thus the measures needed to protect such species from take would also be different.

In sum, the proposed HCP would need to evaluate all potential ODSVRA configurations and operations, particularly in response to the current interim nature of critical components and the potential for upcoming Park changes, whether through the CDP, LCP, or PWP process or all three. As such, and as much as the need for an HCP is especially acute, particularly given past documented episodes of ESA species take at ODSVRA, it is not clear how such an HCP can or will be structured to address all of the above.⁵⁷

⁵⁷ And Commission staff has shared all of these observations with USFWS staff, most recently through formal comments on the HCP NOP/NOI pursuant to CEQA and NEPA dated March 12, 2018 (see Exhibit 10).

Summary and Conclusion

Despite ongoing vehicular and OHV use, ODSVRA still represents a rich coastal resource area and is part of a larger and significant and sensitive ecological system known as the Guadalupe-Nipomo dunes complex. Dunes and dune habitat are among the rarest and most ecologically productive of all coastal ecosystems, which is why the Commission has in the past designated dune habitats as ESHA under the Coastal Act in both CDPs and LCPs, why the County and the Commission designated dunes as ESHA under this LCP when it was certified, why the Commission has otherwise affirmed that designation regarding ODSVRA dunes and related habitats as ESHA in its past actions (see also ESHA discussion in the LCP Compliance Issues section above), and why the Commission continue to again affirm that all of ODSVRA is ESHA herein. Not only are the ODSVRA dunes themselves rare and productive coastal resources, but this dune habitat is also *very* sensitive to degradation from OHV use and activities. In fact, many studies have evaluated the adverse impacts of OHV use on beaches (including both intertidal and upper beach zones) and dunes, finding that OHV recreational activity causes the highest levels of environmental harm to beaches and dunes of *any* recreational activity,⁵⁸ where such harm includes disturbing dune physical attributes and stability; destroying dune vegetation and leading to lower plant diversity and cover; and disturbing, injuring, or killing beach and dune fauna (invertebrates and vertebrates), including sensitive species.⁵⁹ In addition, dunes often support other sensitive fauna, and at ODSVRA have been identified by the USFWS as critical habitat for the threatened (under the Federal Endangered Species Act (ESA)) western snowy plover. The dunes and other related habitats at ODSVRA also support other endangered and threatened species, including the California least tern, California red-legged frog, steelhead trout, and tidewater goby.^{60,61} And thus not only are ODSVRA dunes ESHA for other reasons, they are also ESHA because they provide habitat for sensitive species such as western snowy plover, California least tern, California red-legged frog, steelhead trout, and tidewater goby.

Although State Parks implements a suite of sensitive species management measures, it has not been enough to ensure that these rare species and habitats are given the protections that are *required* under State and Federal law, including the respective ESAs. In fact, OHV use at ODSVRA has continued to cause harm to and the death of ESA-protected species, which constitutes illegal “take” of these species under both the State and Federal ESAs. ESA regulators indicate that such take, including such continued and ongoing take, is simply not allowable and

⁵⁸ See, for example, Schlacher, T.A., L. Thompson, and S. Price: Vehicles versus Conservation of Invertebrates on Sandy Beaches: Mortalities Inflicted by Off-Road Vehicles on Ghost Crabs, in *Marine Ecology* (V.28; 354-367; 2007).

⁵⁹ See for example, Defeo, O., A. McLachlan, D.S. Schoeman, T.A. Schlacher, J. Dugan, A. Jones, M. Lastra, and F. Scapini: *Threats to Sandy Beach Ecosystems: A Review*, in *Estuarine, Coastal, and Shelf Science* (V.81; 1-12; 2009).

⁶⁰ California least tern is listed as an endangered species under both the Federal and State ESAs; tidewater goby is listed as endangered under the Federal ESA, and western snowy plover, California red-legged frog, and South Central Coast steelhead trout are listed as threatened under the Federal ESA.

⁶¹ Although the California and State ESAs are directly administered by other resource agencies (including the United States Fish and Wildlife Service (USFWS) and the California Department of Fish and Wildlife (CDFW)), the Coastal Commission has an independent authority under the Coastal Act to protect coastal resources in general, and ESHA specifically. In discharging this responsibility, the Commission has in the past found that habitats for ESA-listed species are protected as ESHA, including the type of occupied listed species habitats that are present at ODSVRA.

is actually *prohibited* under the ESA. For example, in recent 2016 letters to State Parks, the USFWS described continuing western snowy plover deaths (i.e., three western snowy plovers known to be killed by vehicles in just one 30-day period preceding their first 2016 letter, and at least three more killed in the next several months preceding their second letter) and referred to other mortalities of both western snowy plovers and California least terns that have occurred since 2001, all representing significant violations of the Federal ESA.⁶² Similarly, in 2015 and 2016 letters,⁶³ CDFW identified seven documented California least tern deaths in 2014, and at least ten documented tern mortalities over the preceding fifteen years, which all represent significant violations of the State ESA. Furthermore, vehicles continue to drive through Arroyo Grande Creek when it is flowing, affecting ESA-endangered tidewater goby and ESA-threatened steelhead trout known to be present there. California red-legged frogs are also known to inhabit Arroyo Grande Lagoon, and are similarly under threat. And, most recently in 2018, State Parks documented eight more western snowy plovers and California least terns that were crushed and killed by OHVs.⁶⁴

Further, State Parks has been in a protracted, nearly two-decade effort to develop a Habitat Conservation Plan (HCP) to support an incidental take permit (ITP) related to listed species take at ODSVRA under the Federal ESA, but has never produced a draft HCP for public review, and it is unclear when or even if a Federal HCP/ITP might ever be approved by USFWS.⁶⁵ Further, although focused, detailed, and science-based resource monitoring programs are an important element of Federal HCPs/ITPs, and notwithstanding Parks' efforts to date on this point, State Parks has been operating for some fifty years without a comprehensive resource monitoring program vetted under a certified ESA document, such as an HCP/ITP, which impairs the Commission's ability to understand and assess the status of the Park's sensitive habitats and species as ESHA, and the effect of OHV use on them. In addition, whether or not USFWS ultimately approves an HCP/ITP allowing for some manner of take of ESA-protected species under the *Federal* ESA, CDFW is not allowed to authorize *any* take for California least tern under the *State* ESA except for authorized research (pursuant to the tern's designations as endangered under the State ESA and as Fully Protected under Fish and Game Code Section 3511). Vehicular and OHV use is not such authorized research. Thus, although State Parks can potentially pursue a HCP/ITP to address take under the Federal ESA, it is not clear that there is even a path forward for State Parks to address impacts to listed species under the State ESA and related State statutes. On these points, in 2017 State Parks was served a 60-Day Notice of Intent

⁶² See March 29, 2016 and December 22, 2016 USFWS letters in Exhibit 8.

⁶³ See July 3, 2015 and March 3, 2016 CDFW letters in Exhibit 8.

⁶⁴ Documented in State Parks' Nesting of the California Least Tern and Western Snowy Plover at Oceano Dunes State Vehicular Recreation Area, San Luis Obispo County, California, 2018 Season.

⁶⁵ USFWS published a NOP/NOI to prepare draft environmental documents (under CEQA and NEPA, respectively) for a draft HCP in early 2018, but that NOP/NOI effort did not include an actual draft HCP to be evaluated. USFWS appears to have put the process on hold, including due to State Parks' pursuit of the referenced PWP that might result in a different analytic framework when completed (and thus a moving target) for HCP development and review (e.g., different Park configurations, operations, and use levels). As such, and despite the acute need for an HCP, particularly given past documented episodes of ESA species take, it is not clear whether such an HCP will be fruitful at this time in evaluating environmental impacts when ODSVRA's operational parameters are in flux, and in need of fundamental change to address the range of issues and constraints affecting ODSVRA operations.

to Sue for Violations of Section 9 of the Federal Endangered Species Act by the Center for Biological Diversity (CBD).⁶⁶

In attempting to address some of these ESA issues, State Parks maintains a seasonal habitat protection exclosure area for listed species in the southernmost seaward portion of the OHV riding area from March through September annually. A total area of approximately 300 acres (or roughly 20% of the current OHV riding area) is off limits to vehicles for that seven-month period. However, for the five-month period from October through February, this southern exclosure area is open to public use, including for camping, street-legal vehicles, and OHVs. Such use results in large areas of flattened terrain and barren sand with very limited scattered natural debris and vegetation, thereby limiting its value as a nesting habitat refuge when the area is off limits for the other seven months of the year. This area is also immediately adjacent to the sensitive Oso Flaco Lake and surrounding dune area that is currently off limits to vehicles for habitat protection purposes as directed by the Commission.⁶⁷ For many years, the TRT's Scientific Subcommittee, including the Commission's Senior Ecologists, has strongly recommended that this area be closed year round for rare and endangered species protection purposes, but State Parks has not implemented this recommendation, and the area currently is only seasonally available for listed species for just over half each year.

Thus, while ODSVRA is ESHA for a variety of reasons, including with respect to ESA-related species and their habitats, thus independently raising Coastal Act and LCP concerns, past and continued rare and endangered species and habitat harm and "take" have constituted and continue to represent outright violations of the State and Federal Endangered Species Acts. Violation of these laws is prohibited and, short of complete avoidance of same at least for the State ESA, are not allowed even with an HCP/ITP. Thus, continued OHV operations at ODSVRA in light of these rare and endangered species inconsistencies is another fundamental issue/constraint to continued OHV operations and the status quo.

Further, the changes required above in relation to CDP and the LCP compliance issues (i.e., **Special Conditions 1 through 15**) are also necessary to begin to address ESA/ESHA compliance issues, including particularly related to predator management (see **Special Condition 1**), vehicular enforcement (see **Special Condition 2**), augmented fencing and habitat protection (see **Special Condition 3**), overall monitoring (see **Special Condition 5**), special events protocols (see **Special Condition 6**), nighttime vehicular use prohibitions (see **Special Condition 7**), Arroyo Grande Creek crossing prohibitions (see **Special Condition 8**), updated

⁶⁶ Including for failure to have an HCP/ITP to authorize take of western snowy plover: "Although Section 10 of the ESA provides for HCPs that, if approved by the Service, could authorize a certain level of take, State Parks does not have an HCP for snowy plovers at Oceano Dunes SVRA. State Parks has claimed that it has been developing an HCP for the Oceano Dunes SVRA pursuant to section 10 of the ESA for over two decades, but no such plan has been approved by the Service or even noticed for public review." However, CBD entered into an agreement with State Parks at that time to not actively pursue said litigation as long as active progress was being made in pursuit of the HCP. In recent Commission staff discussions with CBD, they indicate that they reserve the right to initiate the litigation should HCP efforts languish, and are considering their options on that front currently given the current context on this issue.

⁶⁷ Including in 1982 when CDP 4-82-300 was initially approved which prohibited OHV riding in the Oso Flaco area, and in the CDP's fourth amendment in 1991 which prohibited equestrian use in this area as well.

use limits (see **Special Conditions 9 and 10**), and entrance study (see Special Condition 11), permanent southern enclosure (see **Special Condition 12**). In addition, the Commission needs to provide direction to State Parks moving forward in light of all of the issues and constraints identified herein, and that too is an ESA/ESHA compliance issue supporting the need to send such a letter (see **Exhibit 13**).

E. ENVIRONMENTAL JUSTICE AND TRIBAL ISSUES

At its August 2018 meeting, the Coastal Commission adopted its Tribal Consultation Policy to comply with state law and ensure California Native American tribal members are full participants in Commission decisions that affect cultural resources. In addition, at the March 2019 meeting, the Commission adopted its Environmental Justice Policy, the goal of which is to integrate the principles of environmental justice, equality, and social equity into all aspects of the Commission's coastal resource planning and regulatory program. Taking an environmental justice approach to coastal policy requires a fundamental re-thinking of who is connected to the coast, and how. For instance, tribal and indigenous communities with cultural ties to the coast depend on access to ancestral lands and sacred sites to maintain traditional practices, yet their unique perspectives are frequently overlooked or undervalued. Environmental justice stakeholders across the country who have been working in this policy arena for decades have also noted that wherever low income communities and communities of color are concentrated in coastal regions, they are frequently disconnected from the coast by both social and physical barriers. Historic inequalities, as well as California's growing population, changing demographics, socio-economic forces, judicial decisions, and policy choices continue to shape development patterns and population shifts that widen the disparity gap. Not only is equitable access to the coast for all Californians essential, so is protecting coastal natural resources for future generations.

OHV uses at ODSVRA have contributed to disproportionate impacts on the residents of Oceano, who bear many of the burdens of ODSVRA operations with little of its benefits. The town of Oceano is the de facto "gateway" to ODSVRA, but OHV use, including the use of West Grand Avenue and Pier Avenue as the only vehicular accessways, has not only limited economic development of Oceano's beachfront but it has also inhibited non-OHV use of the immediately adjacent six miles of the community's sandy beaches and some 1,500 acres of coastal dunes. Many Oceano residents have voiced frustration with the fact that they cannot use their beach for "ordinary" beach uses, including passive recreational uses such as swimming and day-use, because of the volume and impacts of vehicles using it as a defacto highway to access the OHV riding area. The use of the beach and natural dune areas for OHV riding has also been a long term concern for local tribal representatives (especially 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, who do not support continued OHV use, and who consider ODSVRA to include areas that are sacred ancestral lands that should not, in any circumstance, be used in these ways. For the community of Oceano, not only are these coastal and shoreline areas 'lost' to the community, but these kinds of impacts are also only compounded by other impacts, such as the aforementioned dust problems that fall disproportionately on this community.

In addition, ODSVRA operations are seen by many as stunting what some consider basic community services, local amenities, and economic improvements for the community of Oceano,

a community that is 49.8% Hispanic/Latino with a federal poverty rate of 18.8%,⁶⁸ and a community that was designated as an “Opportunity Zone” by Governor Brown in 2018.⁶⁹ The community is more recently becoming more organized in this respect, including the recent creation of the Oceano Beach Community Association and their work with local Cal Poly San Luis Obispo students to help update the Oceano Community Plan. The County too has recently raised concerns of this type, stating in 2018: “Oceano residents are impacted by the operation of the ODSVRA. The two million annual visitors to the park are impacting the residents of Oceano as they come and go using Pier Avenue (the primary access point to the park). Residents must deal with sand tracked out of the park on vehicle tires and blown off their trailers as they depart Oceano. Residents must also deal with an increased crime rate, additional trash and periods of significant noise. In addition, local first responders and hospitals are impacted as a result of the operation of the ODSVRA.”⁷⁰ To the County’s point, recent years have seen an increase in unpermitted activities in the dunes (e.g., concerts, such as the Pismocean event), large scale OHV events (e.g., Huckfest), and a series of significant injuries and even deaths, all related to the high-intensity OHV use of ODSVRA, and all also unduly affecting the surrounding communities. In addition, the aforementioned dust adversely affects inland communities, like Oceano, and also Nipomo (which is 39.6% Hispanic/Latino with a 10.2% poverty rate) disproportionately.

The Park’s impacts on inland communities presents a classic environmental justice dilemma, wherein Park users gain the benefits of Park use, but these adjacent communities, particularly less affluent communities of color, are forced to bear the problems and degradation associated with that use. Unlike the more affluent, adjacent beach communities, such as Avila Beach and Pismo Beach, the residents of Oceano have *no* non-motorized beach access options fronting their community, and the downwind, inland residents residing under the dust plume receive no benefit from ODSVRA operations. It is clear that these kinds of impacts and inequalities to surrounding areas need to be reassessed, both in light of the Commission’s recent Environmental Justice Policy and Tribal Consultation commitments, but also in terms of appropriately addressing historic and generational inequalities that are at least partially due to Park operations on surrounding areas, in a manner which is consistent with the protection of coastal resources, as required under the CDP, Coastal Act, and LCP. **Special Condition 4** begins to address some of these issues by requiring State Parks to prepare a Public Outreach Plan that maximizes use of beach and dune areas by lower-income, youth, and tribal parties. The Plan is to identify all measures and venues to be used to advertise and increase awareness of such available uses (e.g., ODSVRA website, press release, calendar listings, ads on radio, print ads, social media (including Facebook, Twitter, and Instagram), etc.), and designed to reach as many potential lower-income, youth, and tribal audiences as possible, including audiences that might not normally be reached through traditional and local means (e.g., inland communities).

⁶⁸ According to the U.S. Census American Community Survey 5-Year Estimates, 2013-2017. For relative reference, California’s poverty rate overall is 13.3%, and the City of Pismo Beach’s is 8.4%, with a population that is 84% non-Hispanic white.

⁶⁹ Pursuant to the Tax Cuts and Jobs Act of 2017.

⁷⁰ See July 17, 2018 letter from San Luis Obispo County Counsel Rita Neal to State Parks.

In short, ODSVRA has been operating for many years without adequate consideration of environmental justice and Native American tribal concerns, and, in consideration of the Commission's recently adopted Tribal and Environmental Justice policies, these concerns should be clearly and effectively taken into account as the future of ODSVRA operations is considered in a manner consistent with coastal resource protection. It is clear that current operations of ODSVRA do not adequately respond to the way in which they affect surrounding communities, including those which are less wealthy and include more underserved people of color, and do not appropriately respond to the needs of the tribes that consider these areas sacred ancestral lands and their ancestral home. These are all core CDP 4-82-300 issues as well, not the least of which is because the CDP required State Parks to select an OHV access and staging area that accounted for and reduced impacts to the community of Oceano (see Special Condition 1(B) in **Exhibit 4**). Again, the entrance system has never been finalized as required, the impacts to the community remain unaddressed and unmitigated, and these environmental and tribal justice issues are also a fundamental issue/constraint to State Park's operations moving forward that suggest that the status quo is not sustainable. In addition, the Commission needs to provide direction to State Parks moving forward in light of all of the issues and constraints identified herein, and that too is an environmental and tribal justice compliance issue supporting the need to send such a letter (see **Exhibit 13**).

F. PWP STATUS AND PROPOSED PROJECT ISSUES

As previously described, in lieu of making operational/management changes via the process articulated in CDP 4-82-300 during the January 2017 annual CDP review hearing, State Parks proposed instead to pursue a PWP as the vehicle to address longstanding Coastal Act, LCP, and CDP issues, and as a means of taking a fresh look at ODSVRA uses, management and configuration, including reimagining it to best meet 2019's regulatory requirements and address each of the issues discussed above. Indeed, as stated in State Parks' prepared public document *PWP Project Concepts Public Meeting Information Packet* from February 2019, two primary stated PWP goals are to "Obtain and Manage for Coastal Act Compliance within the Oceano District" and "Manage the Park Consistent with State and Federal Resource Protection Goals and Mandates and Other Applicable Plans." As described, there are serious issues and constraints that need to be resolved through State Parks' proposed PWP.

To date, however, there has yet to be any actual draft PWP language, and thus it is unclear to what degree these issues and problems are being considered and addressed, and thus whether the PWP can possibly be successful in that regard. In February 2019, State Parks released for public comment a list of potential identified projects that could be undertaken, but did not address the above issues and constraints. In fact, the primary project proposed for PWP consideration actually appeared to exacerbate all of the aforementioned coastal resource issues – namely a proposed new, additional campground and OHV staging, riding, and entrance at Oso Flaco Lake (see **Exhibit 12** for a site plan of the proposed campground and OHV entrance). This project not only presents what appear to be serious LCP inconsistencies related to agricultural conversion and ESHA degradation, at a minimum, but instead of circumscribing Park uses and activities in ways that resolve the problems identified, it actually appears to *increase* OHV use and related coastal resource impacts associated with same. In addition, the Commission already denied an OHV accessway at Oso Flaco Lake in its 1982 CDP approval, and also denied a similar

prohibition on equestrian access/use at this area in 1991 (and such prohibition is still codified in CDP Special Condition 1c). Thus, the CDP (and the LCP) would need to be amended to allow for it, and it's unclear whether doing so could even be considered consistent with the Coastal Act. For all these reasons, the proposed Oso Flaco Lake project does not appear approvable, nor does it appear that the PWP effort is moving in the right direction at this time. On the contrary, it appears to be a fairly clear indication that the PWP is heading in a direction that is not in keeping with the vision of developing a contemporary plan that addresses the many difficult and serious issues and constraints presented by OHV riding in the dunes.

G. VIOLATION ISSUES

As discussed in this report, DPR is not in compliance with numerous terms and conditions of its coastal development permit (CDP 4-82-300 as amended). Special Condition 1(b) of CDP 4-82-300 designates the current OHV staging area as interim and requires a final staging area to be designated through amendment of the San Luis Obispo County LUP and CDP within 18 months of effective certification of the LUP (i.e., by October 12, 1985). Special Condition 1(b) also requires construction of the designated final staging area within three years of LUP certification (i.e., by April 12, 1987). Special Condition 2 of CDP No. 4-82-300 designates the two access points at West Grand Avenue and Pier Avenue to be interim and used only until either a final staging area is operational or until the CDP and the LUP are amended to permanently designate their locations. All of the deadlines for compliance with these conditions have long since passed and DPR has failed to designate and operate a permanent access and staging system as required. This represents a three and a half decade old violation of the CDP.⁷¹

In addition to the above, there have been a series of allegations regarding compliance with other terms and conditions of CDP 4-82-300. Many of these are related to allegations that DPR has exceeded allowed vehicular use limits, including in relation to special events. As indicated in the findings above, the methodology for documenting vehicle use numbers at the ODSVRA make measuring use limit compliance challenging. For these reasons, Commission staff has not been able to verify or discount such allegations and, therefore, has not pursued formal violation investigations.

Other allegations have also been made regarding disallowed vehicle (and other) activity within vegetated dune areas inconsistent with CDP requirements that all dune vegetation be fenced off and protected.⁷² As with exceedance of use limits, these allegations have been difficult to pursue. For one thing, some are anecdotal observations without supporting documentation. In other cases, photos of dune plants being trampled have been provided, but it is unclear where such activities occurred within the almost 2 square-mile riding area. In other cases, photos of special events have shown trampling of dune vegetation, but were received after the event was completed.⁷³ In all cases the dynamic nature of the dunes and the spatial extent, and sometimes

⁷¹ See Violation File No. V-3-17-0001.

⁷² See Violation File No. V-3-10-024.

⁷³ Although Commission staff has in such cases identified the issue to DPR, and asked that changes be made in future events, staff has not to date pursued formal enforcement investigations for such cases.

transitory nature, of dune vegetation in general make following up on such allegations difficult, particularly when the vegetation in question is a single plant in the riding area, as has been the case in some allegations.

Moreover, as detailed in the findings above, there have also been complaints over the years that DPR has allowed OHV riding in the La Grande property when it is prohibited in this area by the LCP. As discussed above, the issues surrounding the use of the La Grande property are related to finalizing the access and staging system for the Park, and this, as well as past Commission actions allowing OHV use in much of that area as part of the interim system, have made pursuing such allegations complicated. DPR's use of the La Grande property has also resulted in at least two lawsuits over same, but the issues have yet to be resolved.⁷⁴

Finally, there have been a series of violation allegations over the years related to activities near the two interim accessways, including allegations that the ramps to the beach have been inappropriately augmented, and that signs limiting vehicular use areas have been inappropriately moved to allow vehicular use where it is not allowed under the CDP.⁷⁵ And there have been anecdotal and other allegations (both with and without photos) of vehicles driving through Arroyo Grande Creek, leading to habitat impacts, as well as vehicle impacts in the riding area itself (with respect to impacts to both sensitive bird species and marine mammals). Again, these types of allegations have been difficult to follow-up on after the fact, and Commission staff has not taken formal enforcement actions to address them to date, including because other regulatory agencies, also with jurisdiction, have been involved (e.g., USFWS and CDFW with respect to snowy plover and California least tern).

The above-described violations are not resolved by the Commission's action on this item. However, the changes being made as part of this re-review action will help reduce potential impacts relating to the ongoing interim operational and management parameters, improve the process established by CDP 4-82-300, and set the stage for future actions that could result in resolution of some of these violations. In all cases, the above-described violations have been referred to Commission enforcement staff for appropriate action.

H. COMMISSION-REQUIRED CHANGES AND NEXT STEPS

Although the Commission has to date used its discretion through the annual review process to allow ODSVRA activities to continue based on temporary and interim use parameters (as adjusted most recently in 2001) for decades, it has become clear that the coastal resource issues and constraints affecting vehicular operations at the Park are only becoming more acute, and have reached a point where it is not consistent with the CDP, the Coastal Act, or the LCP for the Commission to continue to allow for ongoing OHV use without changes as it has in the past. In fact, fundamental issues and constraints related the CDP and its relation to LCP compliance, air quality and public health, rare and endangered species and habitats, environmental justice, and tribal concerns all point to the need for the Commission to act to exercise the discretion provided to it by the CDP to help start to resolve the significant coastal resource problems associated with

⁷⁴ Id (see above discussion of La Grande property in the LCP Compliance Issues section of this report).

⁷⁵ See Violation Files Nos. V-3-98-004 and V-3-10-042.

ongoing uses at ODSVRA. The above discussion of issues and constraints affecting ODSVRA operations makes clear that changes are needed, and they are needed immediately.

The Park cannot continue to operate as it has in the past, and that the range of issues and constraints affecting ODSVRA together suggest that it is time to start thinking about ways to transition the Park away from high-intensity OHV use to other forms of public access and recreation. It is also clear that it is very appropriate for the Commission to provide explicit direction to State Parks on these points, including so they can take the Commission's perspective into account as they move forward at ODSVRA, including through their ongoing PWP efforts.

On that point, the PWP effort has always been seen as a vehicle to address issues and problems that have been identified over the years due to ODSVRA operations, including issues and problems as they pertain to the base CDP but also as related to LCP inconsistencies, air quality and public health dangers, ESA violations, and environmental and tribal justice that also are CDP issues. And State Parks has likewise described this PWP effort as taking a fresh look at modifying Park operations in light of these current issues and realities while providing for Park uses that appropriately respond to and respect the Park's special coastal setting. Again, it is clear that the issues and constraints that collectively affect the Park make it clear that the Park cannot continue to operate as it has in the past without significant changes. Instead, the identified issues and constraints suggest that it is time to start thinking about ways to transition the Park away from OHV use to other forms of public access and recreation that better respond to the current realities that affect and are affected by activities at this shoreline location. In short, a Park that is fully consistent with on-the-ground realities, and with today's laws and requirements, does *not* include OHV use.

As is, the entire park is ESHA where OHV use is not even allowed, some 584 acres (or roughly 40% of the OHV riding area) are owned by San Luis Obispo County, some 500 acres (or roughly 33% of the OHV riding area) may soon be closed to riding due to APCD/CARB dust control requirements, and some 300 acres (or roughly 20% of the OHV riding area) needs to be made a permanent ESA-habitat enclosure off-limits to OHV due to inadequacy of the partial closure of the southern enclosure to adequately protect coastal resources. It is clear to that the constraints are rapidly closing in on OHV use, and coastal resource considerations justify elimination of such use moving forward. Granted, current vehicular and OHV users will no doubt suggest that allowing continued OHV use is exactly the manner in which State Parks should proceed, including in light of the OHV-related legislation,⁷⁶ but the OHV-related legislation does not

⁷⁶ On that point, it is important to note that that legislation (i.e., PRC Section 5090 et seq; see earlier discussion) supports and encourages OHV recreational use, but at the same time it does *not* support it at all costs. In fact, the legislation is clear that when OHV use is leading to problems, such as is the case at ODSVRA, then it is appropriate to shut down that use if necessary to protect sensitive natural and cultural resources. For example, PRC Section 5090.02(a)(3) states that the Legislature finds: "The indiscriminate and uncontrolled use of those vehicles may have a deleterious impact on the environment, wildlife habitats, native wildlife, and native flora"; and PRC Section 5090.02(c)(4) states: "When areas or trails or portions thereof cannot be maintained to appropriate established standards for sustained long-term use, they should be closed to use and repaired, to prevent accelerated erosion. Those areas should remain closed until they can be managed within the soil conservation standard or should be closed and restored"; and PRC Section 5090.35(a) states: "The protection of public safety, the appropriate utilization of lands, and the conservation of natural and cultural resources are of the highest priority in the management of the state vehicular recreation areas." Thus, although it has been argued by some that this enabling legislation does not

obviate the need to ensure operations and management at ODSVRA must be done in a manner consistent with the Coastal Act, and to continue high intensity OHV use is to suggest that State Parks should simply disregard the realities affecting this Park, and to suggest that those realities are somehow inconsequential. In the Commission's view, they are not. It is not a single issue that leads to the conclusions derived in this report, rather it is the myriad of significant and overlapping issues, including those described in this report, that are compounding and that together serve to constrain what can and should happen in this Park to comply with the Coastal Act. What is appropriate in the coastal zone necessarily changes and evolves over time, including with advancing scientific knowledge and more clarity regarding regulatory requirements to protect sensitive habitats, species and other coastal resources. OHV use in ESHA, and the amount of problems engendered by it, renders this use not appropriate in this setting in light of the serious issues and constraints identified herein. It is time for development of a contemporary Park plan, as envisioned and required under the CDP and LCP, for Oceano Dunes that recognizes current science, contemporary legal requirements, and good public policy that is in the best interests of all people.

On that point, there are clearly a range of options that State Parks could consider moving forward that can appropriately respond to the above-described significant issues and constraints affecting continued operations at the Park, and there are those who would suggest that the Park eliminate vehicular use in the dunes as one potential solution. It is clear that that would be a fair conclusion based on the evidence in order to adequately protect coastal resources. At the same time, it is also clear that there may be other options that which may receive support from both State Parks and the public, including a version of the Park's future that retained some non-OHV vehicular use of the Park, not only based on its designation as a vehicular recreation area, but also based on its rich history in providing for and accommodating other forms of vehicular use that would not have the same level of adverse impact as OHV use. For example, street-legal vehicle camping on a limited portion of the beach might be able to provide a unique, lower-cost, overnight coastal camping opportunity that ties into the history of the Park and continues its rich camping tradition, but with a significantly reduced impact on sensitive coastal resources and surrounding communities. If properly designed, it could not only retain a unique offering in coastal California, but it could also allow for safe access for residents and visitors that would have the added benefit of greater compatibility with the town of Oceano, including being more closely aligned with its growth and related economic development. Again, there are clearly a range of possibilities that could be considered for the Park moving forward, including undoubtedly others different from these, but at a minimum the high-intensity OHV use is simply unsustainable in terms of coastal resource compatibility.

allow for the phasing out of OHV use, the legislation itself paints a different picture, one that clearly recognizes that it does *not* stand for OHV use at all cost, and rather requires such use to be undertaken in a manner consistent with long-term sustainable use where the conservation of natural and cultural resources is prioritized; and it certainly allows for closing off OHV use where it is causing the types of problems it is causing at ODSVRA. In addition, and perhaps just as compelling, PRC Section 5090 does not somehow preempt other State laws, including the Coastal Act (and by extension the LCP). On the contrary, as with other laws affecting the same resources, it is important to harmonize the laws as much as possible. On that point, here, proper application of both laws based upon facts on the ground would appear to suggest the same outcome: namely that OHV use at this location is not sustainable, and the time has come to transition to other appropriate recreational uses.

Commission Direction to State Parks

As an initial step, and in order to provide as much detail and direction to State Parks as possible with respect to issues and constraints from a Coastal Act perspective as Parks moves forward to re-vision ODSVRA operations, including in light of the PWP, the Commission provide a summary version of this report in letter form to State Parks (see **Exhibit 13**). The intent of the letter is provide State Parks the Commission's direction about ODSVRA's future, including as that future is planned via the PWP or otherwise.

There are many potential means that the Commission could employ to appropriate manage dune and other sensitive habitat resources in light of the above-described issues and constraints, and the CDP authorizes the Commission to require the operational and management changes for the protection of coastal resources that it finds appropriate. Such measures could include, for example, closing off the entire ODSVRA to OHV use by a date certain (or subject to a phased schedule), or closing off portions of it to vehicular use that are particularly problematic from a resource or legal constraint perspective (e.g., closing off fore dunes and vegetating for dust control purposes, closing off the La Grande Tract, or closing off one of the two vehicular entrances at either West Grand Avenue or Pier Avenues). While these types of changes would have obvious resource benefits, and could be supported due to the significant coastal resource issues and constraints facing the Park at the current time, these are obviously very significant changes that would benefit from more time for State Parks to evaluate, as well as from more discussion and debate amongst the various parties and stakeholders, and therefore are more suited to longer-term visioning (e.g., associated with the PWP process or otherwise). Thus, these type of major changes are not identified as part of this CDP review. They may become appropriate through future annual reviews, including depending on progress made towards resolving the Park issues identified herein by that time, but for now the Commission uses its discretion to choose to focus in the short term on lesser changes that can be implemented quickly and provide tangible coastal resource improvements.

Specifically, and as explained in more detail in the previous issues analysis findings (which are incorporated herein by reference), the Commission makes a series of operational changes that better can help regulate OHV uses in light of the identified issues and resource constraints under the CDP. These are primarily relatively minor operational improvements to address identified issues/constraints in the short term (such as improved predator manager), but also range to more significant short term actions (such as eliminating Arroyo Grande Creek crossings during specified conditions and closing off the southern enclosure area to vehicle use permanently). They also include accounting for and allowing dust control measures to be implemented through the base CDP as a means of better streamlining necessary measures in that respect. In all cases, the Commission finds that the changes are necessary to better manage vehicle impacts to significant coastal resources consistent with the authority retained by the Commission to do so under the base CDP. As described previously, the recommended changes, which are codified in the previously described special conditions, are as follows:

- **Increase Predator Management.** Implement an improved predator management plan, including enclosures for trash and food waste, and BMPs for addressing predation of sensitive species (including by coyotes, raccoons, skunks, opossums, ravens, gulls, owls, and peregrine falcons) (see **Special Condition 1**).

- **Increase Operational Enforcement.** Increase enforcement of all vehicular use limits, all vehicular speed limits, and all other vehicular requirements, including through additional signs, rangers, and parameters for verifying that the number of vehicles in the Park do not exceed maximum allowances (see **Special Condition 2**).
- **Add Fencing.** Install additional fencing in specific areas to better protect resources (including fencing in the South Oso Flaco Lake area, fencing suitable for enhanced predator management, fencing to better define the southern enclosure, and fencing to ensure all vegetated dune areas are appropriately fenced off) (see **Special Condition 3**).
- **Enhance Public Outreach.** Institute a public outreach program to increase use of appropriate beach and dune areas by lower-income, youth, and tribal parties (see **Special Condition 4**).
- **Eliminate the TRT and Implement Annual Reports.** Eliminate the Technical Review Team (TRT) and replace it with an annual reporting program (see **Special Condition 5**).
- **Add Special Events Protocols.** Require a separate CDP for all special events that could result in adverse impacts to coastal resources, including music festivals, concerts, OHV events (e.g., Huckfest), and any other special events that propose an intensity of use beyond those specified in the CDP (see **Special Condition 6**).
- **Prohibit Night Riding.** Prohibit vehicular and OHV activity during nighttime hours (i.e., from one-hour after sunset and to one-hour before sunrise) (see **Special Condition 7**).
- **Prohibit Arroyo Grande Creek Crossing.** Prohibit vehicular crossings of Arroyo Grande Creek when it flows (i.e., shut down all OHV and camping operations during this time) but for emergency vehicles, and monitor the creek to ensure that users are not allowed south of the Creek when it will soon connect to the ocean, and to provide time for users south of the Creek to exit before it connects to the ocean (see **Special Condition 8**).
- **Reduce Use Limits.** Reduce interim vehicular and OHV daily use limits an amount proportionate to the acreage that has been removed from vehicular/OHV use (e.g., due to dust control requirements, other enclosures, etc.) (see **Special Condition 9**).
- **Eliminate Exceptions to Use Limits.** Eliminate the four exceptions that allow unlimited vehicular and OHV use on Memorial Day, Fourth of July, Labor Day, and Thanksgiving weekends (see **Special Condition 10**).
- **Evaluate Entrance Modifications.** Evaluate changes that can be made to provide vehicular access into the Park in way that can reduce coastal resource impacts, particularly as it relates Arroyo Grande Creek crossings and more normal and typical beach uses north of the riding area (see **Special Condition 11**).
- **Make Seasonal Enclosure Permanent.** Make the roughly 300-acre seasonal endangered species enclosure area permanent, and restore as needed to enhance habitat (see **Special Condition 12**).

- **Allow for Future Closures for Required Dust Control.** Allow perimeter fencing and/or vegetation and related development (e.g., monitoring equipment, etc.) for dust control purposes for all areas specified by the San Luis Obispo County Air Pollution Control District (see **Special Condition 13**).

In case of any conflict between these special conditions (i.e., Special Conditions 1 through 15 as discussed in this report) and those conditions previously included in the CDP, these special conditions (Special Conditions 1 through 15) shall take precedence (see **Special Condition 14**). In addition, Coastal Act Section 30620(c)(1) authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications. Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its actions on the pending CDP applications in the event that the Commission's action is challenged by a party other than the Applicants. Therefore, consistent with Section 30620(c), the Commission imposes **Special Condition 15** requiring reimbursement for any costs and attorneys' fees that the Commission incurs in connection with the defense of any action brought by a party other than State Parks challenging the approval or issuance of this CDP, or challenging any other aspect of its implementation, including with respect to condition compliance efforts.

Conclusion

The status quo related to operations and management at ODSVRA under the CDP is clearly not sustainable in a manner consistent with coastal resource protection requirements, and it is time to more fully understand and evaluate other public access and recreation options that better respond to the current realities that affect and are affected by activities at this shoreline location. Put simply, a Park that is fully consistent with on-the-ground realities, consistent with CDP, Coastal Act, and LCP requirements, does *not* include OHV use. Rather, it is clear that the coastal resource issues and constraints are warrant elimination of OHV use at the Park.

These issues, constraints, and conclusions, however, also represent an important opportunity to rethink this Park and what 3,600 acres of State-owned and operated dune ESHA and six linear miles of public beach *should be* into the future, properly taking into consideration protection of coastal resources. And the PWP process in which State Parks is engaged can clearly operate as a key vehicle to think about, define, and effectuate that future. But to the Commission, the coastal resource issues and constraints that collectively affect ODSVRA make it clear that ODSVRA's future cannot continue to operate as it has in the past without change under the CDP. Instead, the identified issues and constraints suggest that it is time to start thinking about ways to transition ODSVRA away from OHV use to other forms of public access and recreation that better respond to the current realities that affect and are affected by activities at this shoreline location. ODSVRA operations that are fully consistent with on-the-ground realities and with the legal requirements of the CDP, Coastal Act, and LCP do *not* include OHV use, and thus, whether through the PWP process or otherwise, including through a future CDP review, State Parks needs to explore a future ODSVRA that transitions away from OHV and towards less intensive forms of public access and recreation.

Again, there are clearly a range of possibilities that could be considered for ODSVRA moving forward, and the Commission *very much* welcomes the opportunity to engage with State Parks

ODSVRA Review

and the community in an effort to develop a truly new vision for the Park and surrounding area for the future. Good coastal planning and good public policy direct no less.

APPENDIX A: SUBSTANTIVE FILE DOCUMENTS

- CDP 3-82-300, as amended
- CDP 3-12-050
- San Luis Obispo County LCP

APPENDIX B: STAFF CONTACT WITH OTHER AGENCIES AND GROUPS

- California Natural Resources Agency
- California Department of Parks and Recreation (Statewide, Oceano District, and Off-Highway Motor Vehicle Division)
- California Air Resources Board
- California Department of Fish and Wildlife
- San Luis Obispo County Department of Planning and Building
- San Luis Obispo County Air Pollution Control District
- United States Fish and Wildlife Service
- NOAA Fisheries
- Northern Chumash Tribal Council
- Friends of Oceano Dunes
- Center for Biological Diversity
- Concerned Citizens for Clean Air
- Oceano Beach Community Association
- Dunes Alliance
- Sierra Club