

CALIFORNIA COASTAL COMMISSION

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Th12a

CDP 4-82-300 (2019 ODSVRA REVIEW)

JULY 11, 2019

EXHIBITS

Table of Contents

- 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 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

Pier Avenue Access

Interim Staging Area

La Grande Tract

Post Markers

Open Riding Area

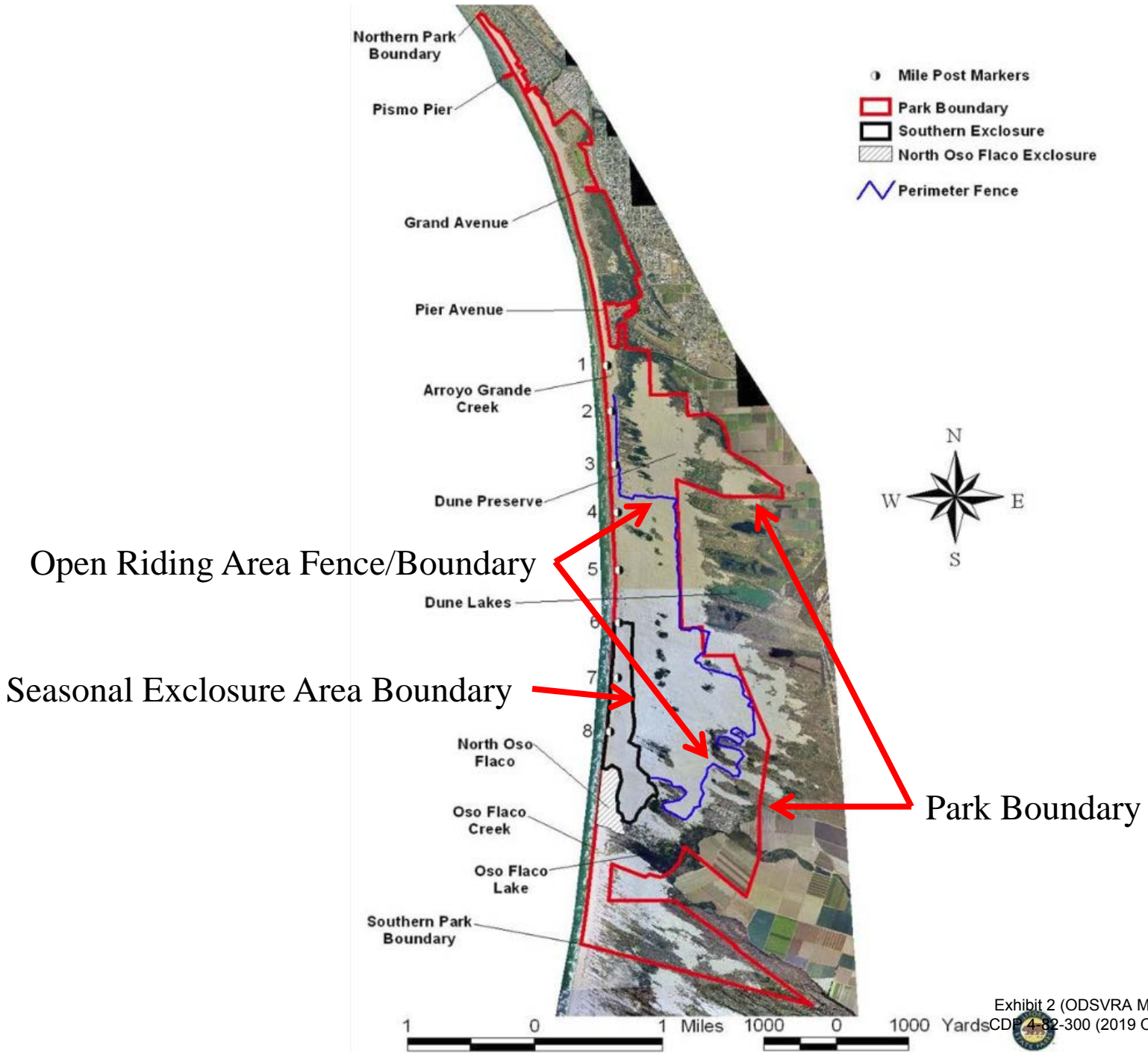
Seasonal Exclosure Area
(Southern Exclosure)

Oso Flaco Access
(pedestrian only)

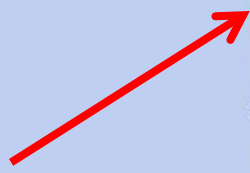


Ocean Dunes and Vicinity

- Post Markers
- Off-Highway Vehicle Riding Area
- Ocean Dunes SVRA State Park Boundary
- Seasonal Exclosure for Plover
- Dune Preserve



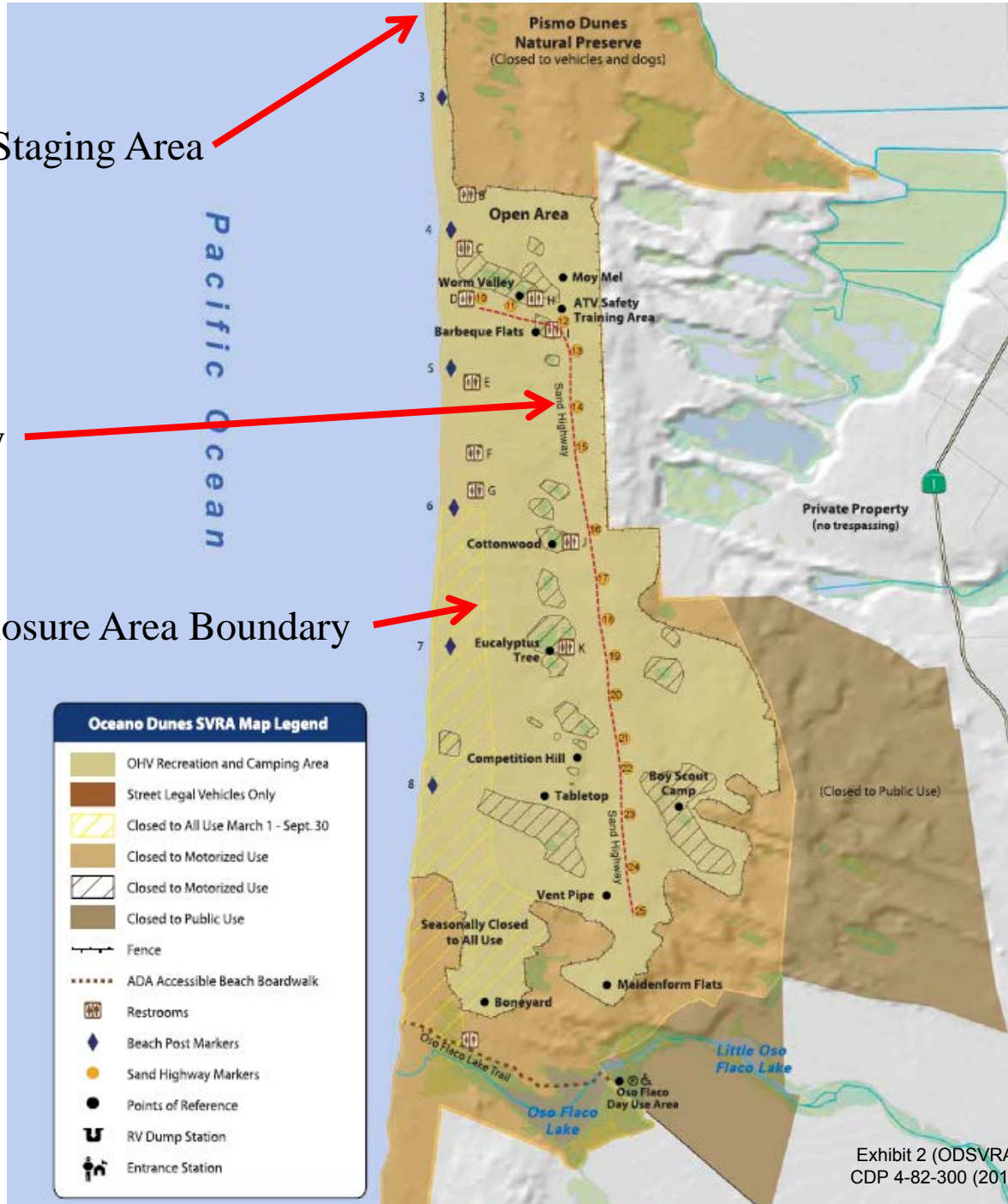
Interim Staging Area

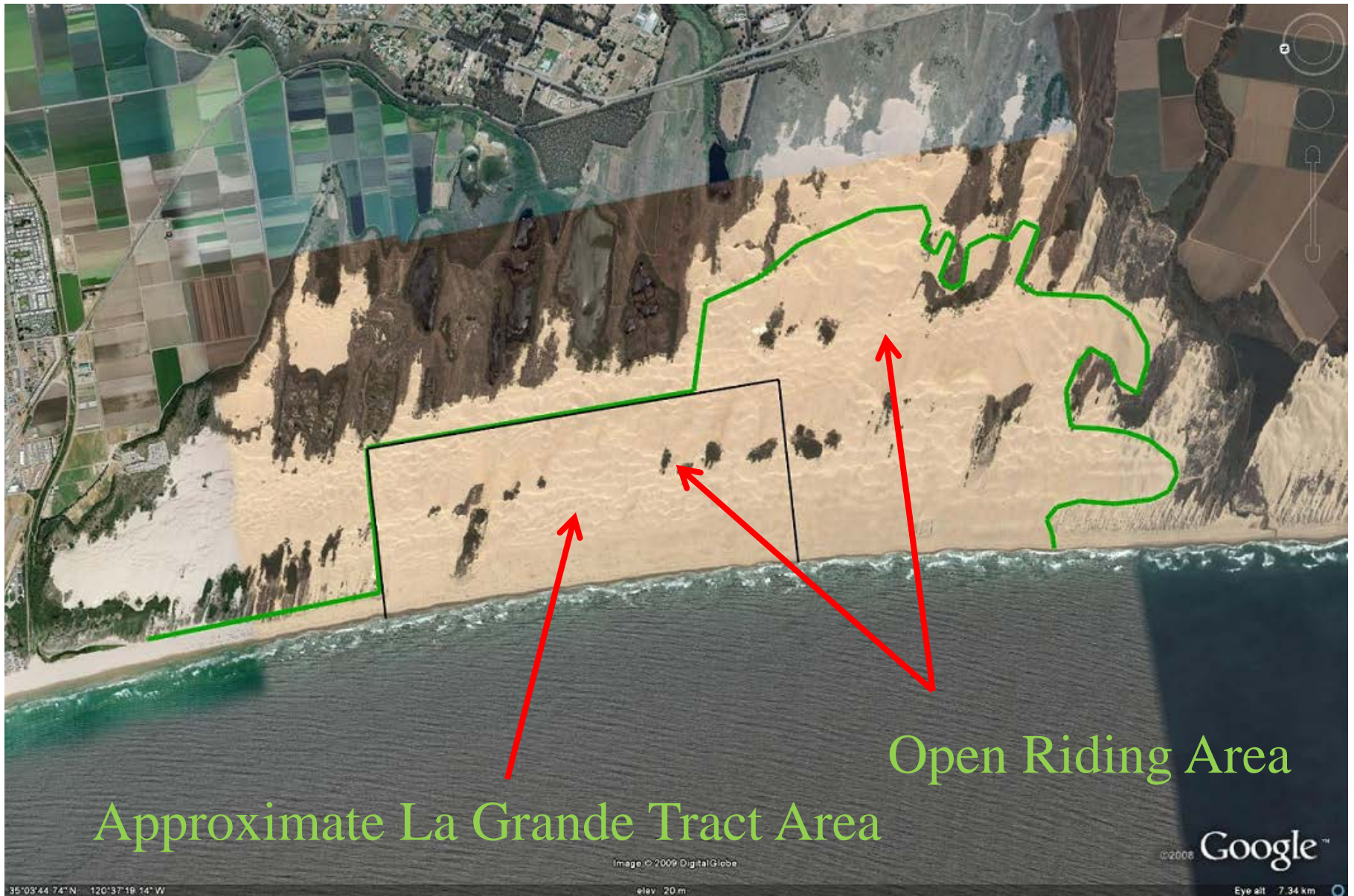


Sand Highway



Seasonal Exclusion Area Boundary





Open Riding Area

Approximate La Grande Tract Area

FIGURE 4

OFF-ROAD VEHICLE USE AREAS

LEGEND

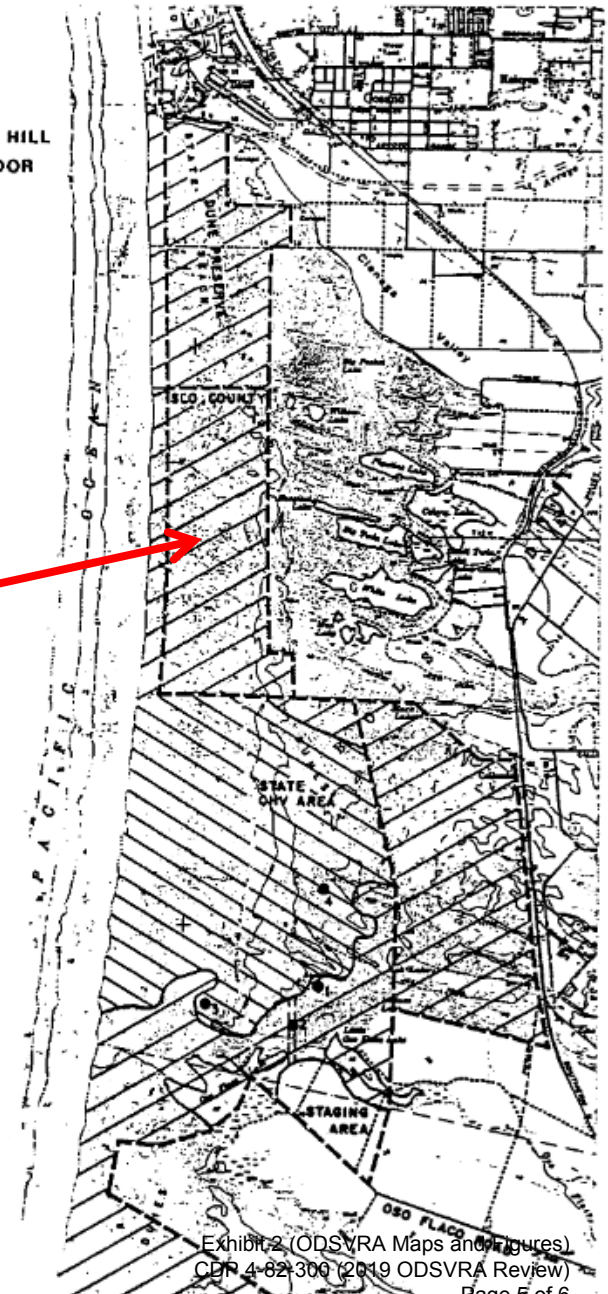


OHV USE AREA



BUFFER AREA

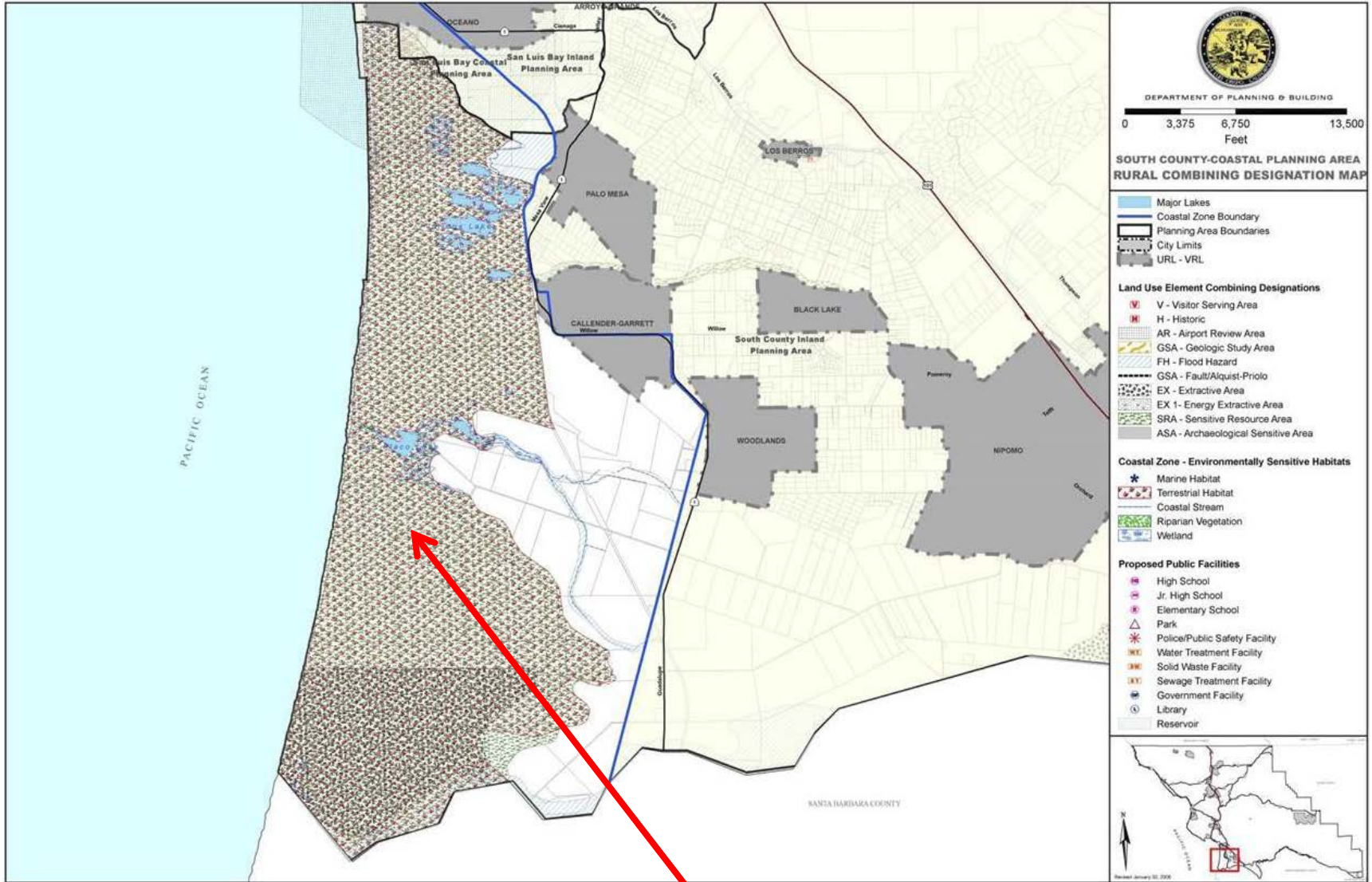
- 1 LITTLE COREOPSIS HILL
- 2 OHV ACCESS CORRIDOR (Schematic)
- 3 MAIDENFORM FLATS
- 4 BOY SCOUT CAMP



South County Area Plan
Figure 4

La Grande Tract

San Luis Obispo County LCP ESHA Map



Sensitive Resource Area (SRA) and Terrestrial Habitat ESHA Designation

Aerial Near Pier Avenue Access and community of Oceano



Exhibit 3 (ODSVRA Photos)
CDP 4-82-300 (2019 OSDVRA Review)
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Aerial Near Interim Staging Area



Exhibit 9 (ODSVRA Photos)
CDP 4-82-300 (2019 OSDVRA Review)
Page 2 of 8

Aerial of Open Riding Area



Exhibit 3 (ODSVRA Photos)
CDP 4-82-300 (2019 OSDVRA Review)
Page 3 of 8

Oso Flaco Lake Area



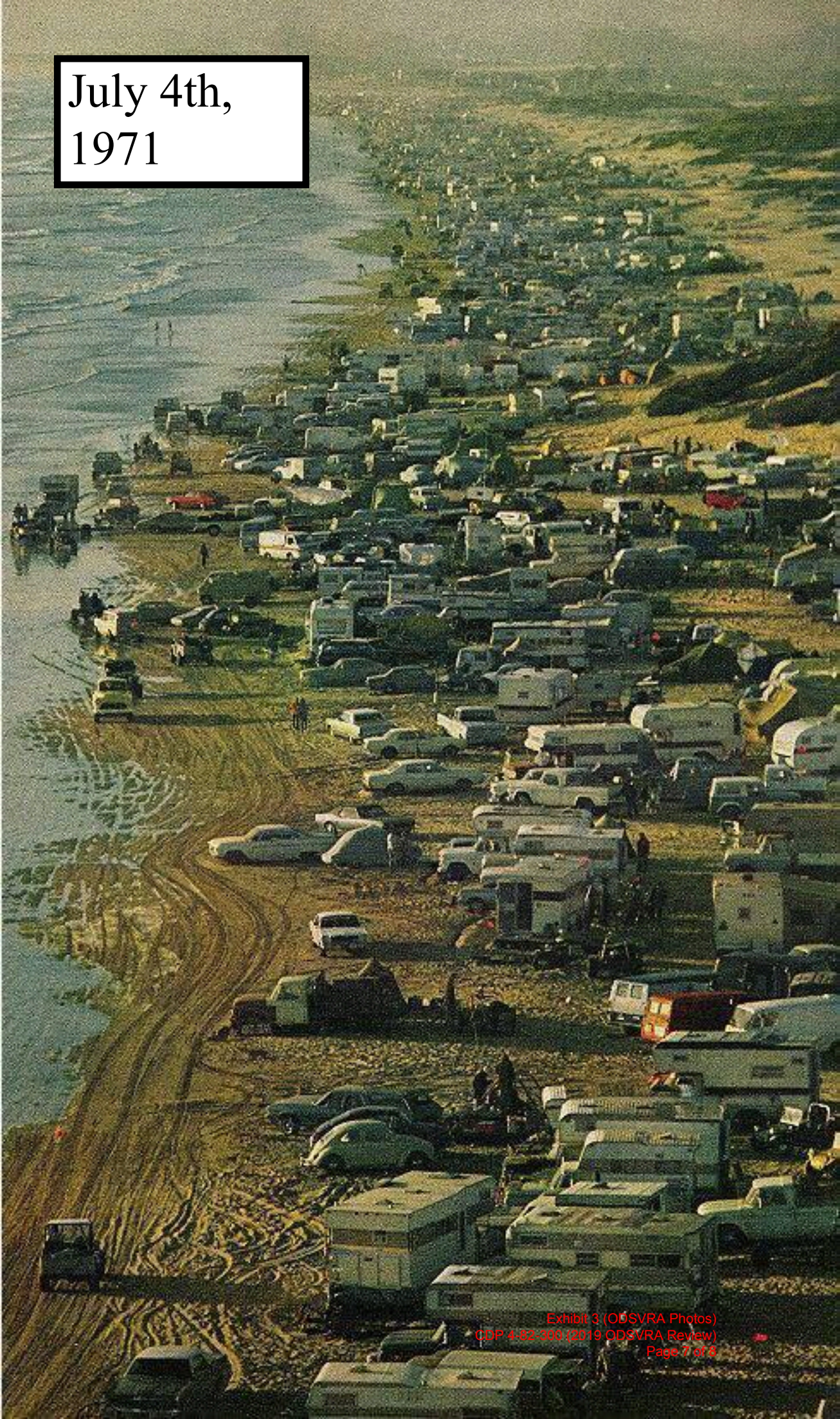
Huckfest



Straw bales deployed as dust mitigation measures



July 4th,
1971





March 1st, 2011

Exhibit 3 (ODSVRA Photos)
CDP 4-82-300 (2019 OSDVRA Review)
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CDP 4-82-300, approved in 1982

1. Staging Area Location:

A. An interim OHV staging area shall be operational no later than Labor Day weekend 1982 in a designated area on or adjacent to the beach south of Sand Highway (Exhibit C). This staging area shall remain operational subject to the stated conditions and standards herein until such time as a permanent staging area is constructed.

Upon implementation of the interim staging area, all OHVs, ATCs and other non-street legal vehicles shall be trailored to and from Grande and Pier Avenues. At all times such vehicles when under their own power, shall be prohibited north of the northerly terminus of Sand Highway.

B. A permanent staging area site shall be selected as expeditiously as possible but in no case later than 18 months from the effective date of the County's LUP certification consistent with the following standards. Construction of this permanent staging area shall begin no later than three (3) years from the date of the certification of the County's LUP of its LCP. If construction and operation of a permanent staging area cannot be accomplished within the above time limits, this permit shall be subject to review and modification if necessary or appropriate by the County or the Commission or either in consultation with the other. Prior to construction, the County's LUP and the State Parks General Development Plan shall be amended to include the selected site with all additional standards or conditions for its design and operation. At the present time, there are several known locations which shall be considered and evaluated for staging area use, these locations are: Callendar Road area; the stables/agricultural lands area south of Arroyo Grande Creek; Agricultural lands north of Oso Flaco Creek adjacent to the Union Oil property; on the beach as per the interim staging area described herein (see Exhibit C). Other potential sites may also be evaluated. The site selection process shall include an environmental impacts analysis adequate to enable the selection of the least environmentally damaging location for the use. Accordingly, the on and off-site impacts of each alternative shall be measured against the impacts of the others. In selecting the site and amending the County's LUP and the State Parks General Development Plan to incorporate the selected site, the following standards must be found to have been met: 1) that the site selected is the least environmentally damaging alternative; and 2) that all feasible design and operational related mitigations have been incorporated to minimize adverse environmental impacts. Additional standards for site selection are in their order of importance: locating a site which reduces to the maximum extent feasible OHV related impacts to the residential character of the community of Oceano; locating a site which facilitates the successful separation and regulation of recreational uses within the park itself; locating a site which can be constructed and operational expeditiously.

C. Oso Flaco Lakes Area: An off-highway vehicle staging area shall not be constructed at the Oso Flaco Lake site indicated on Exhibit C. As part of the fencing proposed in this project, the Oso Flaco causeway to the PSVRA shall be permanently closed to vehicular traffic. Pedestrian and equestrian access only shall be allowed over

the causeway or in the vicinity of the Oso Flaco Lakes. The state owned agricultural lands south of Oso Flaco Lakes may be utilized for the development of a campground for passive recreational use of the dune areas within the Park excluded from OHV use. The State Parks and Recreation Department shall amend its General Development Plan accordingly. Uses in this camping area shall be permitted only if consistent with the resource protection policies of the San Luis Obispo County Land Use Plan; 100 foot buffering setbacks from the lakes, creek and wetlands shall be applied at a minimum with greater setbacks required if necessary, only resource dependent uses and passive recreational activities shall be permitted.

2. Control of Access to the Park: Effective immediately upon issuance of this permit and until either a permanent staging area is operational or this permit and the County's LUP is amended to accommodate possible necessary minor adjustments in the operation of these conditions, access and egress to and from the park shall be controlled and monitored in the following manner:
 - A. All vehicular access and egress shall be via Grande Avenue and Pier Avenue, an effective vehicle barriers shall be placed at the southern end of the Oso Flaco causeway to assure that no OHV access over the causeway is permitted.
 - B. Manned vehicle contact stations (kiosks) shall be placed at the Pier and Grande Avenue access points.

3. Control of uses within the Park: By the July 4 week-end of 1982 and as soon as possible prior to that date, the Parks and Recreation Department shall institute a Public Information program for vehicular recreational users within the Parks units. At the Grande and Pier Avenue's kiosks, occupants of all vehicles entering the Park will be provided a pass or ticket to the park and the following information:
 - A. The following rules are effective immediately with violators subject to citation and fines:
 - All non-street legal vehicles shall be prohibited from the area north of Sand Highway after dusk each day.
 - Vegetated dune areas, whether they are fenced or unfenced, are strictly off-limits to all vehicles.
 - All areas posted as Private Property or Restricted Use are off-limits to vehicle activity.
 - All vehicle activity is prohibited south of the Oso Flaco Creek (or south of the fence line that is constructed).

 - B. Beginning with LABOR DAY WEEKEND 1982 Beach Camping within the Park units shall be restricted to a maximum of 500 units* with each unit available only through a reservation obtained through the State Parks Reservation System (Ticketron). On that weekend and thereafter, admittance to the Park for the purpose of overnight camping will be denied to individuals without a valid reservation unless vacant unreserved camping spaces are available.

*One unit equals a campsite for a single camper vehicle.

- C. Beginning LABOR DAY WEEKEND, specific areas of the Park will be designated for specific types of vehicles. The designations will be as follows:
- Area north of Sand Highway to Grande Avenue designated for and restricted to street legal vehicle use.
 - Area south of Sand Highway to the fenced or posted area north of Oso Flaco Creek designated for OHV use.
- D. On or before January 1983, the following will occur: OHV day use will be limited to a specified number of users established in consultation with agreement by the County of San Luis Obispo and the Executive Director of the Coastal Commission and the Department of State Parks. OHV day use fees may be collected.
- E. Protective Fencing of Dunes, archeological resources, and wet environments shall be accomplished in the following manner subject to review and approval by the Executive Director of the Coastal Commission in consultation with the County of San Luis Obispo and the State Department of Fish and Game.
- (a) Fencing proposed and approved herein, plus fencing of the area shown as Area A on Exhibit D plus the perimeter fencing along the Sand Highway and the Eastern Boundary of ODSVRA shall be accomplished by November 30, 1982. All other vegetated areas indicated on Exhibit D shall be fenced by Aug 31, 1983.
- (b) One primary objective of the fencing is to prohibit vehicle access to the dune area south of Oso Flaco Creek. Accordingly, the east/west aligned fence north of Oso Flaco Creek shall continue seaward to the mean low water line so that vehicles do not pass to the south. The continuation of this line to mean low water may require different construction than normal fencing – possibly driven piles.
- (c) Except for the following, fencing alignments shall be placed a minimum of 100 feet from the vegetated areas being fenced:
1. Along Sand Highway where the fence would encroach into the Sand Highway travel corridor.
 2. Along the seaward side of the foredunes paralleling the beach where fencing may be placed in a manner similar to that already existing along the westerly line of the State Dune Preserve.
 3. In other areas where it is demonstrated that a placement closer to vegetation will not diminish the effectiveness of the fence to stabilize the dune, protect the vegetation and provide necessary conditions for dune rehabilitation and restoration. Said demonstration shall be in the form of competent analysis of the dynamics of dune sand transport and natural condition necessary for dune

stabilization. Reduction in the minimum setback under this condition shall be reviewed and approved by the Executive Director of the Coastal Commission.

- (d) If fenced corridors to the Oso Flaco are constructed, they shall only be for use of state parks personnel and for the purpose of emergency, normal patrol duties, management and enforcement. Accordingly, these corridors shall have locked gates as shown on Exhibit D.
- (e) Since a barrier to OHV movement south of Oso Flaco Creek is to be constructed on the north side of the creek, any construction of fencing south of Oso Flaco Creek or lakes shall be only for the purpose of preventing OHV intrusion into the State Park holdings from adjacent private lands. Such fencing shall therefore be perimeter fencing around parcels 8, 7, 3, and 4 and shall require a coastal development permit. Fencing applied for herein south of Oso Flaco which is not perimeter fencing shall not be constructed, or if constructed shall have been to an alignment approved herein by November 30, 1982.

4. Restoration

A dunes restoration program shall be undertaken by the DPR. The program shall be reviewed and approved by the Executive Director of the Coastal Commission. Restoration of vegetated dunes within the fenced-off areas shall be undertaken as expeditiously as funds and technical knowledge allows. Plantings shall begin no later than January 1983 with notification of the County and the Executive Director of the Coastal Commission. The restoration program shall be an ongoing program with the experimental or initial phase completed within three (3) years of the date of certification of the LUP and the full program in effect on that date or before.

5. Protection of Archeological Resources

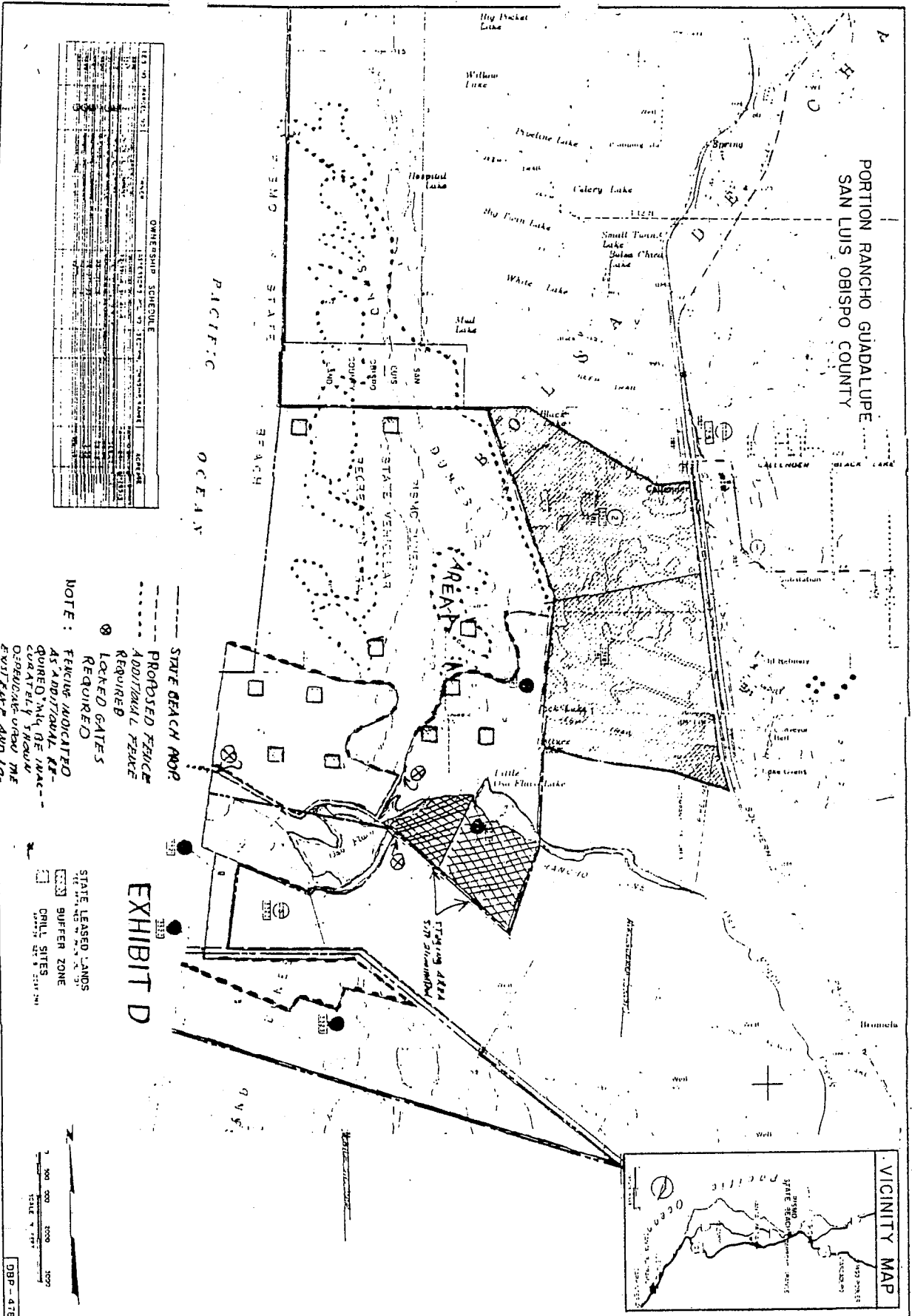
Archeological resources within the PDVRA shall be protected by fencing. Accordingly, as part of the current fencing project, site No. SLO 199 shall be fenced for protection. Other sites shall be fenced as their locations become known.

- 6. Six months after the issuance of this permit, and annually thereafter until a permanent staging area is operational, a formal review of the effectiveness of the conditions of the permit shall take place. This review shall be undertaken jointly by designated representatives of the California Coastal Commission, the California Department of Fish and Game, the County of San Luis Obispo, the Community of Oceano, the California Department of Parks and Recreation and user groups.

If after each of the annual reviews, or after the three year review required in condition 1(b) above, it is found that the Off-Highway Vehicle (OHV) use within the Pismo Dunes State Vehicle Recreation Area (PDSVRA) is not occurring in a manner which protects environmentally sensitive habitats and adjacent community values consistent with the requirements of the San Luis Obispo 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. If the above reviews find that OHV use within the PDSVRA is consistent with the protection of environmentally sensitive habitats and adjacent community values, and/or that additional staff and management revenues become available to the California Department of Parks and Recreation, levels of OHV use of the PDSVRA may be increased to a level not to exceed the enforcement and management capabilities available to the Pismo Beach State Parks Units.

PORTION RANCHO GUADALUPE
SAN LUIS OBISPO COUNTY



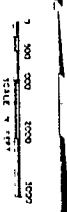
ITEM NO.	DESCRIPTION	DATE	BY
1	OWNER'S SCHEDULE		
2	STATE LEASED LANDS		
3	ORILL SITES		
4	BUFFER ZONE		
5	PROPOSED FENCE		
6	ADDITIONAL FENCE		
7	LOCKED GATES		
8	REQUIRED		
9	REQUIRED		
10	REQUIRED		
11	REQUIRED		
12	REQUIRED		
13	REQUIRED		
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16	REQUIRED		
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24	REQUIRED		
25	REQUIRED		
26	REQUIRED		
27	REQUIRED		
28	REQUIRED		
29	REQUIRED		
30	REQUIRED		

NOTE: FENCING INDICATED AS ADDITIONAL REQUIRED ONLY BE INSTALLED AFTER THE EVALUATION AND LOCATION OF VEGETATION.

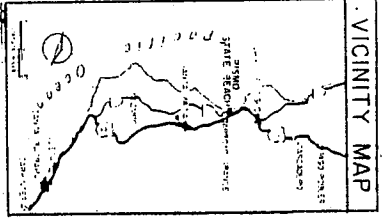
STATE BEACH PROP
PROPOSED FENCE
ADDITIONAL FENCE
REQUIRED
LOCKED GATES
REQUIRED

EXHIBIT D

STATE LEASED LANDS
ORILL SITES
BUFFER ZONE



DBP-478



SHEET NO. 15651	PISMO STATE BEACH PISMO DUNES STATE VEHICULAR RECREATION AREA ACQUISITION PLAN	RESOURCES AGENCY OF CALIFORNIA DEPARTMENT OF PARKS AND RECREATION	REVISIONS	DATE	DESIGNED
			REVISED PCL 4 & 5 BOUNDARY	12-77	CHAWA
			REVISED PCL 4 & 5 BOUNDARY	1-78	CHAWA
			REVISED PCL 1	1-78	CHAWA
			REVISED PCL 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30	1-78	CHAWA
			REVISED PCL 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30	1-78	CHAWA
			REVISED PCL 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30	1-78	CHAWA
			REVISED PCL 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30	1-78	CHAWA

CDP 4-82-300-A, approved in 1982

1. Staging Area Location:

A. An interim OHV staging area shall be operational no later than ~~Labor Day weekend~~ September 15th 1982 in a designated area on or adjacent to the beach south of ~~Sand Highway~~ the two mile post (Exhibit C). This staging area shall remain operational subject to the stated conditions and standards herein until such time as a permanent staging area is constructed.

Upon implementation of the interim staging area, all OHVs, ATCs and other non-street legal vehicles shall be trailored to and from Grande and Pier Avenues. At all times such vehicles when under their own power, shall be prohibited north of the northerly terminus of Sand Highway.

B. A permanent staging area site shall be selected as expeditiously as possible but in no case later than 18 months from the effective date of the County's LUP certification consistent with the following standards. Construction of this permanent staging area shall begin no later than three (3) years from the date of the certification of the County's LUP of its LCP. If construction and operation of a permanent staging area cannot be accomplished within the above time limits, this permit shall be subject to review and modification if necessary or appropriate by the County or the Commission or either in consultation with the other. Prior to construction, the County's LUP and the State Parks General Development Plan shall be amended to include the selected site with all additional standards or conditions for its design and operation. At the present time, there are several known locations which shall be considered and evaluated for staging area use, these locations are: Callendar Road area; the stables/agricultural lands area south of Arroyo Grande Creek; Agricultural lands north of Oso Flaco Creek adjacent to the Union Oil property; on the beach as per the interim staging area described herein (see Exhibit C). Other potential sites may also be evaluated. The site selection process shall include an environmental impacts analysis adequate to enable the selection of the least environmentally damaging location for the use. Accordingly, the on and off-site impacts of each alternative shall be measured against the impacts of the others. In selecting the site and amending the County's LUP and the State Parks General Development Plan to incorporate the selected site, the following standards must be found to have been met: 1) that the site selected is the least environmentally damaging alternative; and 2) that all feasible design and operational related mitigations have been incorporated to minimize adverse environmental impacts. Additional standards for site selection are in their order of importance: locating a site which reduces to the maximum extent feasible OHV related impacts to the residential character of the community of Oceano; locating a site which facilitates the successful separation and regulation of recreational uses within the park itself; locating a site which can be constructed and operational expeditiously.

C. Oso Flaco Lakes Area: An off-highway vehicle staging area shall not be constructed at the Oso Flaco Lake site indicated on Exhibit C. As part of the fencing proposed in this project, the Oso Flaco causeway to the PSVRA shall be permanently

closed to vehicular traffic. Pedestrian and equestrian access only shall be allowed over the causeway or in the vicinity of the Oso Flaco Lakes. The state owned agricultural lands south of Oso Flaco Lakes may be utilized for the development of a campground for passive recreational use of the dune areas within the Park excluded from OHV use. The State Parks and Recreation Department shall amend its General Development Plan accordingly. Uses in this camping area shall be permitted only if consistent with the resource protection policies of the San Luis Obispo County Land Use Plan; 100 foot buffering setbacks from the lakes, creek and wetlands shall be applied at a minimum with greater setbacks required if necessary, only resource dependent uses and passive recreational activities shall be permitted.

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 - All non-street legal vehicles shall be prohibited from the area north of ~~Sand Highway~~ the two mile post after dusk each day.
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 - All areas posted as Private Property or Restricted Use are off-limits to vehicle activity.
 - All vehicle activity is prohibited south of the Oso Flaco Creek (or south of the fence line that is constructed).

 - B. Beginning with ~~LABOR DAY WEEKEND~~ September 15, 1982 Beach Camping within the Park units shall be restricted to a maximum of 500 units* with each unit available only through a reservation obtained through the State Parks Reservation System (Ticketron). ~~On that weekend and thereafter~~, admittance to the Park for the purpose of overnight camping will be denied to individuals without a valid reservation unless vacant unreserved camping spaces are available.

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- Area north of ~~Sand Highway~~ the two mile post to Grande Avenue designated for and restricted to street legal vehicle use.
 - Area south of ~~Sand Highway~~ the two mile post to the fenced or posted area north of Oso Flaco Creek designated for OHV use.
- D. On or before January 1983, the following will occur: OHV day use will be limited to a specified number of users established in consultation with agreement by the County of San Luis Obispo and the Executive Director of the Coastal Commission and the Department of State Parks. OHV day use fees may be collected.
- E. Protective Fencing of Dunes, archeological resources, and wet environments shall be accomplished in the following manner subject to review and approval by the Executive Director of the Coastal Commission in consultation with the County of San Luis Obispo and the State Department of Fish and Game.
- (a) Fencing proposed and approved herein, plus fencing of the area shown as Area A on Exhibit D plus the perimeter fencing along the Sand Highway (or along the ridge just eastward of the Sand Highway) and the Eastern Boundary of ODSVRA shall be accomplished by November 30, 1982. All other vegetated areas indicated on Exhibit D shall be fenced by Aug 31, 1983.
- (b) One primary objective of the fencing is to prohibit vehicle access to the dune area south of Oso Flaco Creek. Accordingly, the east/west aligned fence north of Oso Flaco Creek shall continue seaward to the mean low water line so that vehicles do not pass to the south. The continuation of this line to mean low water may require different construction than normal fencing – possibly driven piles.
- (c) Except for the following, fencing alignments shall be placed a minimum of 100 feet from the vegetated areas being fenced:
1. Along Sand Highway where the fence would encroach into the Sand Highway travel corridor.
 2. Along the seaward side of the foredunes paralleling the beach where fencing may be placed in a manner similar to that already existing along the westerly line of the State Dune Preserve except that a minimal number of breaks in the foredune fencing outside of the dune preserve may be allowed of OHV access to the backdune area. The fencing protecting the foredunes need not be a closed perimeter fence completely surrounding the foredune vegetation if it can be demonstrated to the Executive Director that such perimeter fencing is not necessary for effective preservation and stabilization of foredunes.

3. In other areas where it is demonstrated that a placement closer to vegetation will not diminish the effectiveness of the fence to stabilize the dune, protect the vegetation and provide necessary conditions for dune rehabilitation and restoration. Said demonstration shall be in the form of competent analysis of the dynamics of dune sand transport and natural condition necessary for dune stabilization. Reduction in the minimum setback under this condition shall be reviewed and approved by the Executive Director of the Coastal Commission.

(d) If fenced corridors to the Oso Flaco are constructed, they shall only be for use of state parks personnel and for the purpose of emergency, normal patrol duties, management and enforcement. Accordingly, these corridors shall have locked gates as shown on Exhibit D.

(e) Since a barrier to OHV movement south of Oso Flaco Creek is to be constructed on the north side of the creek, any construction of fencing south of Oso Flaco Creek or lakes shall be only for the purpose of preventing OHV intrusion into the State Park holdings from adjacent private lands. Such fencing shall therefore be perimeter fencing around parcels 8, 7, 3, and 4 and shall require a coastal development permit. Fencing applied for herein south of Oso Flaco which is not perimeter fencing shall not be constructed, or if constructed shall have been to an alignment approved herein by November 30, 1982.

4. Restoration

A dunes restoration program shall be undertaken by the DPR. The program shall be reviewed and approved by the Executive Director of the Coastal Commission. Restoration of vegetated dunes within the fenced-off areas shall be undertaken as expeditiously as funds and technical knowledge allows. Plantings shall begin no later than January 1983 with notification of the County and the Executive Director of the Coastal Commission. The restoration program shall be an ongoing program with the experimental or initial phase completed within three (3) years of the date of certification of the LUP and the full program in effect on that date or before.

5. Protection of Archeological Resources

Archeological resources within the PDVRA shall be protected by fencing. Accordingly, as part of the current fencing project, site No. SLO 199 shall be fenced for protection. Other sites shall be fenced as their locations become known.

6. Six months after the issuance of this permit, and annually thereafter until a permanent staging area is operational, a formal review of the effectiveness of the conditions of the permit shall take place. This review shall be undertaken jointly by designated representatives of the California Coastal Commission, the California Department of Fish and Game, the County of San Luis Obispo, the Community of Oceano, the California Department of Parks and Recreation and user groups.

If after each of the annual reviews, or after the three year review required in condition 1(b) above, it is found that the Off-Highway Vehicle (OHV) use within the Pismo Dunes State Vehicle Recreation Area (PDSVRA) is not occurring in a manner which protects environmentally sensitive habitats and adjacent community values consistent with the requirements of the San Luis Obispo 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. If the above reviews find that OHV use within the PDSVRA is consistent with the protection of environmentally sensitive habitats and adjacent community values, and/or that additional staff and management revenues become available to the California Department of Parks and Recreation, levels of OHV use of the PDSVRA may be increased to a level not to exceed the enforcement and management capabilities available to the Pismo Beach State Parks Units.

CDP 4-82-300-A2, approved in 1983

1. Staging Area Location:

A. An interim OHV staging area shall be operational no later than September 15th 1982 in a designated area on or adjacent to the beach south of the two mile post (Exhibit C). This staging area shall remain operational subject to the stated conditions and standards herein until such time as a permanent staging area is constructed.

Upon implementation of the interim staging area, all OHVs, ATCs and other non-street legal vehicles shall be trailored to and from Grande and Pier Avenues. At all times such vehicles when under their own power, shall be prohibited north of the northerly terminus of Sand Highway.

B. A permanent staging area site shall be selected as expeditiously as possible but in no case later than 18 months from the effective date of the County's LUP certification consistent with the following standards. Construction of this permanent staging area shall begin no later than three (3) years from the date of the certification of the County's LUP of its LCP. If construction and operation of a permanent staging area cannot be accomplished within the above time limits, this permit shall be subject to review and modification if necessary or appropriate by the County or the Commission or either in consultation with the other. Prior to construction, the County's LUP and the State Parks General Development Plan shall be amended to include the selected site with all additional standards or conditions for its design and operation. At the present time, there are several known locations which shall be considered and evaluated for staging area use, these locations are: Callendar Road area; the stables/agricultural lands area south of Arroyo Grande Creek; Agricultural lands north of Oso Flaco Creek adjacent to the Union Oil property; on the beach as per the interim staging area described herein (see Exhibit C). Other potential sites may also be evaluated. The site selection process shall include an environmental impacts analysis adequate to enable the selection of the least environmentally damaging location for the use. Accordingly, the on and off-site impacts of each alternative shall be measured against the impacts of the others. In selecting the site and amending the County's LUP and the State Parks General Development Plan to incorporate the selected site, the following standards must be found to have been met: 1) that the site selected is the least environmentally damaging alternative; and 2) that all feasible design and operational related mitigations have been incorporated to minimize adverse environmental impacts. Additional standards for site selection are in their order of importance: locating a site which reduces to the maximum extent feasible OHV related impacts to the residential character of the community of Oceano; locating a site which facilitates the successful separation and regulation of recreational uses within the park itself; locating a site which can be constructed and operational expeditiously.

C. Oso Flaco Lakes Area: An off-highway vehicle staging area shall not be constructed at the Oso Flaco Lake site indicated on Exhibit C. As part of the fencing proposed in this project, the Oso Flaco causeway to the PSVRA shall be permanently closed to vehicular traffic. Pedestrian and equestrian access only shall be allowed over

the causeway or in the vicinity of the Oso Flaco Lakes. The state owned agricultural lands south of Oso Flaco Lakes may be utilized for the development of a campground for passive recreational use of the dune areas within the Park excluded from OHV use. The State Parks and Recreation Department shall amend its General Development Plan accordingly. Uses in this camping area shall be permitted only if consistent with the resource protection policies of the San Luis Obispo County Land Use Plan; 100 foot buffering setbacks from the lakes, creek and wetlands shall be applied at a minimum with greater setbacks required if necessary, only resource dependent uses and passive recreational activities shall be permitted.

2. Control of Access to the Park: Effective immediately upon issuance of this permit and until either a permanent staging area is operational or this permit and the County's LUP is amended to accommodate possible necessary minor adjustments in the operation of these conditions, access and egress to and from the park shall be controlled and monitored in the following manner:
 - A. All vehicular access and egress shall be via Grande Avenue and Pier Avenue, an effective vehicle barriers shall be placed at the southern end of the Oso Flaco causeway to assure that no OHV access over the causeway is permitted.
 - B. Manned vehicle contact stations (kiosks) shall be placed at the Pier and Grande Avenue access points.

3. Control of uses within the Park: By the July 4 week-end of 1982 and as soon as possible prior to that date, the Parks and Recreation Department shall institute a Public Information program for vehicular recreational users within the Parks units. At the Grande and Pier Avenue's kiosks, occupants of all vehicles entering the Park will be provided a pass or ticket to the park and the following information:
 - A. The following rules are effective immediately with violators subject to citation and fines:
 - All non-street legal vehicles shall be prohibited from the area north of the two mile post after dusk each day.
 - Vegetated dune areas, whether they are fenced or unfenced, are strictly off-limits to all vehicles.
 - All areas posted as Private Property or Restricted Use are off-limits to vehicle activity.
 - All vehicle activity is prohibited south of the Oso Flaco Creek (or south of the fence line that is constructed).

 - B. Beginning with the 4th of July weekend 1983 ~~September 15, 1982~~ Beach Camping within the Park units shall be restricted to a maximum of ~~500~~ 1,000 units* with each unit available only through a reservation obtained through the State Parks Reservation System (Ticketron). Thereafter, admittance to the Park for the purpose of overnight camping will be denied to individuals without a valid reservation unless vacant unreserved camping spaces are available.

*One unit equals a campsite for a single camper vehicle.

- C. Beginning September 15, 1982, specific areas of the Park will be designated for specific types of vehicles. The designations will be as follows:
- Area north of the two mile post to Grande Avenue designated for and restricted to street legal vehicle use.
 - Area south of the two mile post to the fenced or posted area north of Oso Flaco Creek designated for OHV use.
- D. On or before January 1983, the following will occur: OHV day use will be limited to a specified number of users established in consultation with agreement by the County of San Luis Obispo and the Executive Director of the Coastal Commission and the Department of State Parks. OHV day use fees may be collected.
- E. Protective Fencing of Dunes, archeological resources, and wet environments shall be accomplished in the following manner subject to review and approval by the Executive Director of the Coastal Commission in consultation with the County of San Luis Obispo and the State Department of Fish and Game.
- (a) Fencing proposed and approved herein, plus fencing of the area shown as Area A on Exhibit D plus the perimeter fencing along the Sand Highway (or along the ridge just eastward of the Sand Highway) and the Eastern Boundary of ODSVRA shall be accomplished by November 30, 1982. All other vegetated areas indicated on Exhibit D shall be fenced by Aug 31, 1983.
- (b) One primary objective of the fencing is to prohibit vehicle access to the dune area south of Oso Flaco Creek. Accordingly, the east/west aligned fence north of Oso Flaco Creek shall continue seaward to the mean low water line so that vehicles do not pass to the south. The continuation of this line to mean low water may require different construction than normal fencing – possibly driven piles.
- (c) Except for the following, fencing alignments shall be placed a minimum of 100 feet from the vegetated areas being fenced:
1. Along Sand Highway where the fence would encroach into the Sand Highway travel corridor.
 2. Along the seaward side of the foredunes paralleling the beach where fencing may be placed in a manner similar to that already existing along the westerly line of the State Dune Preserve except that a minimal number of breaks in the foredune fencing outside of the dune preserve may be allowed of OHV access to the backdune area. The fencing protecting the foredunes need not be a closed perimeter fence completely surrounding the foredune vegetation if it can be demonstrated to the Executive Director that such perimeter fencing is not necessary for effective preservation and stabilization of foredunes.

3. In other areas where it is demonstrated that a placement closer to vegetation will not diminish the effectiveness of the fence to stabilize the dune, protect the vegetation and provide necessary conditions for dune rehabilitation and restoration. Said demonstration shall be in the form of competent analysis of the dynamics of dune sand transport and natural condition necessary for dune stabilization. Reduction in the minimum setback under this condition shall be reviewed and approved by the Executive Director of the Coastal Commission.

(d) If fenced corridors to the Oso Flaco are constructed, they shall only be for use of state parks personnel and for the purpose of emergency, normal patrol duties, management and enforcement. Accordingly, these corridors shall have locked gates as shown on Exhibit D.

(e) Since a barrier to OHV movement south of Oso Flaco Creek is to be constructed on the north side of the creek, any construction of fencing south of Oso Flaco Creek or lakes shall be only for the purpose of preventing OHV intrusion into the State Park holdings from adjacent private lands. Such fencing shall therefore be perimeter fencing around parcels 8, 7, 3, and 4 and shall require a coastal development permit. Fencing applied for herein south of Oso Flaco which is not perimeter fencing shall not be constructed, or if constructed shall have been to an alignment approved herein by November 30, 1982.

4. Restoration

A dunes restoration program shall be undertaken by the DPR. The program shall be reviewed and approved by the Executive Director of the Coastal Commission. Restoration of vegetated dunes within the fenced-off areas shall be undertaken as expeditiously as funds and technical knowledge allows. Plantings shall begin no later than January 1983 with notification of the County and the Executive Director of the Coastal Commission. The restoration program shall be an ongoing program with the experimental or initial phase completed within three (3) years of the date of certification of the LUP and the full program in effect on that date or before.

5. Protection of Archeological Resources

Archeological resources within the PDVRA shall be protected by fencing. Accordingly, as part of the current fencing project, site No. SLO 199 shall be fenced for protection. Other sites shall be fenced as their locations become known.

6. Six months after the issuance of this permit, and annually thereafter (or as needed) until a permanent staging area is operational, a formal review of the effectiveness of the conditions of the permit shall take place. This review shall be undertaken jointly by designated representatives of the California Coastal Commission, the California Department of Fish and Game, the County of San Luis Obispo, the Community of Oceano, the California Department of Parks and Recreation and user groups.

~~If after each of the annual reviews, or after the three-year review required in condition 1(b) above, it is found that the Off Highway Vehicle (OHV) use within the Pismo Dunes State Vehicle Recreation Area (PDSVRA) is not occurring in a manner which protects environmentally sensitive habitats and adjacent community values consistent with the requirements of the San Luis Obispo 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. If the above reviews find that OHV use within the PDSVRA is consistent with the protection of environmentally sensitive habitats and adjacent community values, and/or that additional staff and management revenues become available to the California Department of Parks and Recreation, levels of OHV use of the PDSVRA may be increased to a level not to exceed the enforcement and management capabilities available to the Pismo Beach State Parks Units.~~

If, after an annual (or any other) review it is found that the ORV use within the SVRA is not occurring in a manner that protects environmentally sensitive habitats and community values consistent with the conditions of this permit and the County's Local Coastal Plan, then OHV access and the number of camp units allowed may be further limited by the Executive Director with concurrence by resolution of the Board of Supervisors of San Luis Obispo County. If the above reviews find that OHV use in the SVRA is consistent with the protection of environmentally sensitive habitats and community values, and/or that additional staff and management revenues become available to the DPR, levels of OHV access and the allowable number of camp units may be increased not to exceed the enforcement and management capabilities of the DPR by determination of the Executive Director with concurrence by resolution of the Board of Supervisors of San Luis Obispo County.

CDP 4-82-300-A3, approved in 1984

1. Staging Area Location:

A. An interim OHV staging area shall be operational no later than September 15th 1982 in a designated area on or adjacent to the beach south of the two mile post (Exhibit C). This staging area shall remain operational subject to the stated conditions and standards herein until such time as a permanent staging area is constructed.

Upon implementation of the interim staging area, all OHVs, ATCs and other non-street legal vehicles shall be trailored to and from Grande and Pier Avenues. At all times such vehicles when under their own power, shall be prohibited north of the northerly terminus of Sand Highway.

B. A permanent staging area site shall be selected as expeditiously as possible but in no case later than 18 months from the effective date of the County's LUP certification consistent with the following standards. Construction of this permanent staging area shall begin no later than three (3) years from the date of the certification of the County's LUP of its LCP. If construction and operation of a permanent staging area cannot be accomplished within the above time limits, this permit shall be subject to review and modification if necessary or appropriate by the County or the Commission or either in consultation with the other. Prior to construction, the County's LUP and the State Parks General Development Plan shall be amended to include the selected site with all additional standards or conditions for its design and operation. At the present time, there are several known locations which shall be considered and evaluated for staging area use, these locations are: Callendar Road area; the stables/agricultural lands area south of Arroyo Grande Creek; Agricultural lands north of Oso Flaco Creek adjacent to the Union Oil property; on the beach as per the interim staging area described herein (see Exhibit C). Other potential sites may also be evaluated. The site selection process shall include an environmental impacts analysis adequate to enable the selection of the least environmentally damaging location for the use. Accordingly, the on and off-site impacts of each alternative shall be measured against the impacts of the others. In selecting the site and amending the County's LUP and the State Parks General Development Plan to incorporate the selected site, the following standards must be found to have been met: 1) that the site selected is the least environmentally damaging alternative; and 2) that all feasible design and operational related mitigations have been incorporated to minimize adverse environmental impacts. Additional standards for site selection are in their order of importance: locating a site which reduces to the maximum extent feasible OHV related impacts to the residential character of the community of Oceano; locating a site which facilitates the successful separation and regulation of recreational uses within the park itself; locating a site which can be constructed and operational expeditiously.

C. Oso Flaco Lakes Area: An off-highway vehicle staging area shall not be constructed at the Oso Flaco Lake site indicated on Exhibit C. As part of the fencing proposed in this project, the Oso Flaco causeway to the PSVRA shall be permanently closed to vehicular traffic. Pedestrian and equestrian access only shall be allowed over

the causeway or in the vicinity of the Oso Flaco Lakes. The state owned agricultural lands south of Oso Flaco Lakes may be utilized for the development of a campground for passive recreational use of the dune areas within the Park excluded from OHV use. The State Parks and Recreation Department shall amend its General Development Plan accordingly. Uses in this camping area shall be permitted only if consistent with the resource protection policies of the San Luis Obispo County Land Use Plan; 100 foot buffering setbacks from the lakes, creek and wetlands shall be applied at a minimum with greater setbacks required if necessary, only resource dependent uses and passive recreational activities shall be permitted.

2. Control of Access to the Park: Effective immediately upon issuance of this permit and until either a permanent staging area is operational or this permit and the County's LUP is amended to accommodate possible necessary minor adjustments in the operation of these conditions, access and egress to and from the park shall be controlled and monitored in the following manner:
 - A. All vehicular access and egress shall be via Grande Avenue and Pier Avenue, an effective vehicle barriers shall be placed at the southern end of the Oso Flaco causeway to assure that no OHV access over the causeway is permitted.
 - B. Manned vehicle contact stations (kiosks) shall be placed at the Pier and Grande Avenue access points.

3. Control of uses within the Park: By the July 4 week-end of 1982 and as soon as possible prior to that date, the Parks and Recreation Department shall institute a Public Information program for vehicular recreational users within the Parks units. At the Grande and Pier Avenue's kiosks, occupants of all vehicles entering the Park will be provided a pass or ticket to the park and the following information:
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 - All areas posted as Private Property or Restricted Use are off-limits to vehicle activity.
 - All vehicle activity is prohibited south of the Oso Flaco Creek (or south of the fence line that is constructed).

 - B. Beginning with the 4th of July weekend 1983 Beach Camping within the Park units shall be restricted to a maximum of 1,000 units* with each unit available only through a reservation obtained through the State Parks Reservation System (Ticketron). Thereafter, admittance to the Park for the purpose of overnight camping will be denied to individuals without a valid reservation unless vacant unreserved camping spaces are available.

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- C. Beginning September 15, 1982, specific areas of the Park will be designated for specific types of vehicles. The designations will be as follows:
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- E. Protective Fencing of Dunes, archeological resources, and wet environments shall be accomplished in the following manner subject to review and approval by the Executive Director of the Coastal Commission in consultation with the County of San Luis Obispo and the State Department of Fish and Game.
- (a) Fencing proposed and approved herein, plus fencing of the area shown as ~~Area A~~ on Exhibit ~~A-2 D~~ plus the perimeter fencing along the Sand Highway (or along the ridge just eastward of the Sand Highway) and the Eastern Boundary of ODSVRA shall be accomplished by November 30, 1982. All other vegetated areas indicated on Exhibit ~~A-2 D~~ shall be fenced by Aug 31, 1983.
- (b) One primary objective of the fencing is to prohibit vehicle access to the dune area south of Oso Flaco Creek. Accordingly, the east/west aligned fence north of Oso Flaco Creek shall continue seaward to the mean low water line so that vehicles do not pass to the south. The continuation of this line to mean low water may require different construction than normal fencing – possibly driven piles.
- (c) Except for the following, fencing alignments shall be placed a minimum of 100 feet from the vegetated areas being fenced:
1. Along Sand Highway where the fence would encroach into the Sand Highway travel corridor.
 2. Along the seaward side of the foredunes paralleling the beach where fencing may be placed in a manner similar to that already existing along the westerly line of the State Dune Preserve except that a minimal number of breaks in the foredune fencing outside of the dune preserve may be allowed of OHV access to the backdune area. The fencing protecting the foredunes need not be a closed perimeter fence completely surrounding the foredune vegetation if it can be demonstrated to the Executive Director that such perimeter fencing is not necessary for effective preservation and stabilization of foredunes.

3. In other areas where it is demonstrated that a placement closer to vegetation will not diminish the effectiveness of the fence to stabilize the dune, protect the vegetation and provide necessary conditions for dune rehabilitation and restoration. Said demonstration shall be in the form of competent analysis of the dynamics of dune sand transport and natural condition necessary for dune stabilization. Reduction in the minimum setback under this condition shall be reviewed and approved by the Executive Director of the Coastal Commission.

(d) If fenced corridors to the Oso Flaco are constructed, they shall only be for use of state parks personnel and for the purpose of emergency, normal patrol duties, management and enforcement. Accordingly, these corridors shall have locked gates ~~as shown on Exhibit D~~.

(e) Since a barrier to OHV movement south of Oso Flaco Creek is to be constructed on the north side of the creek, any construction of fencing south of Oso Flaco Creek or lakes shall be only for the purpose of preventing OHV intrusion into the State Park holdings from adjacent private lands. Such fencing shall therefore be perimeter fencing around parcels 8, 7, 3, and 4 and shall require a coastal development permit. Fencing applied for herein south of Oso Flaco which is not perimeter fencing shall not be constructed, or if constructed shall have been to an alignment approved herein by November 30, 1982.

4. Restoration

A dunes restoration program shall be undertaken by the DPR. The program shall be reviewed and approved by the Executive Director of the Coastal Commission. Restoration of vegetated dunes within the fenced-off areas shall be undertaken as expeditiously as funds and technical knowledge allows. Plantings shall begin no later than January 1983 with notification of the County and the Executive Director of the Coastal Commission. The restoration program shall be an ongoing program with the experimental or initial phase completed within three (3) years of the date of certification of the LUP and the full program in effect on that date or before.

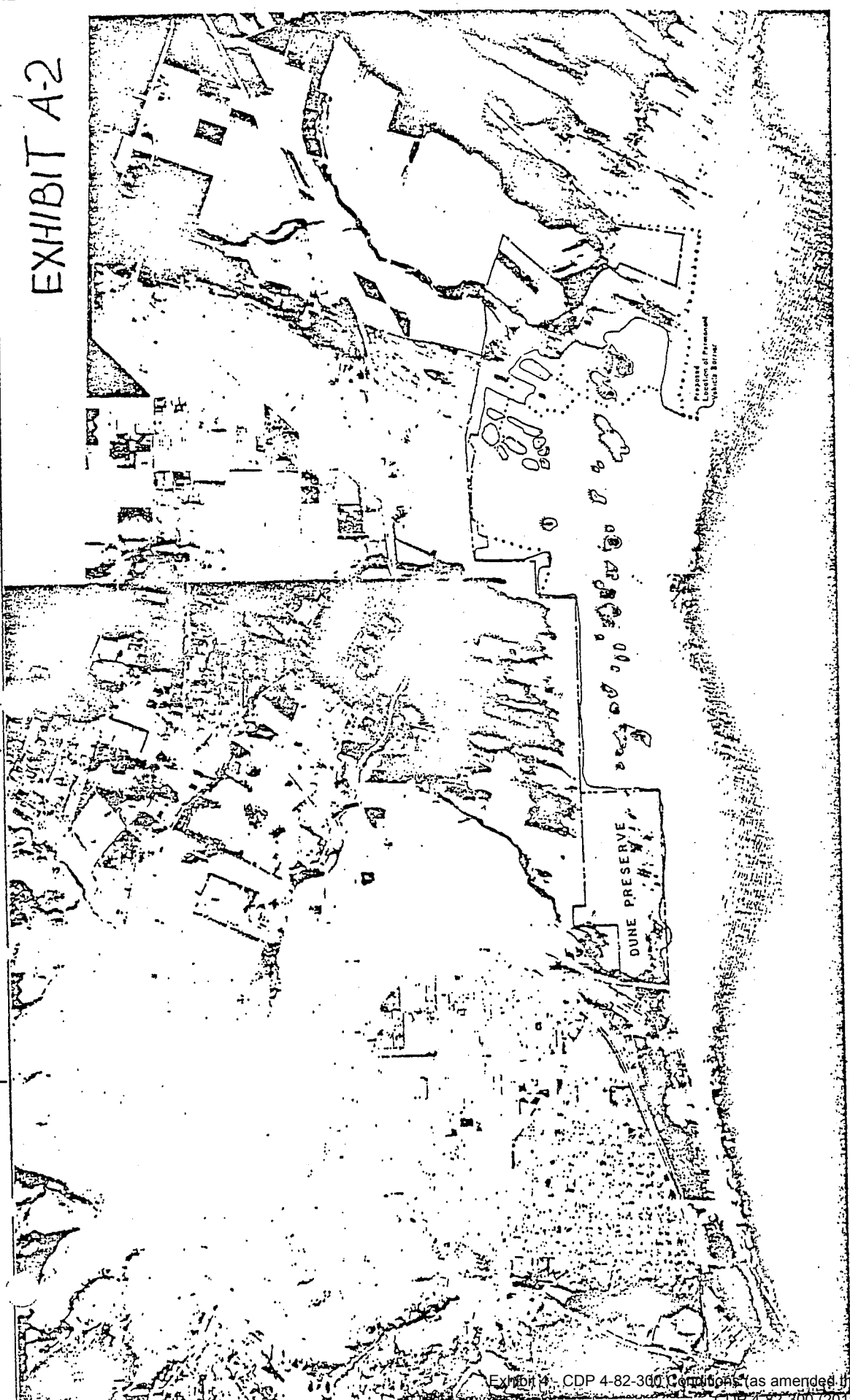
5. Protection of Archeological Resources

Archeological resources within the PDVRA shall be protected by fencing. Accordingly, as part of the current fencing project, site No. SLO 199 shall be fenced for protection. Other sites shall be fenced as their locations become known.

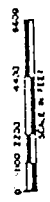
6. Six months after the issuance of this permit, and annually thereafter (or as needed) until a permanent staging area is operational, a formal review of the effectiveness of the conditions of the permit shall take place. This review shall be undertaken jointly by designated representatives of the California Coastal Commission, the California Department of Fish and Game, the County of San Luis Obispo, the Community of Oceano, the California Department of Parks and Recreation and user groups.

If, after an annual (or any other) review it is found that the ORV use within the SVRA is not occurring in a manner that protects environmentally sensitive habitats and community values consistent with the conditions of this permit and the County's Local Coastal Plan, then OHV access and the number of camp units allowed may be further limited by the Executive Director with concurrence by resolution of the Board of Supervisors of San Luis Obispo County. If the above reviews find that OHV use in the SVRA is consistent with the protection of environmentally sensitive habitats and community values, and/or that additional staff and management revenues become available to the DPR, levels of OHV access and the allowable number of camp units may be increased not to exceed the enforcement and management capabilities of the DPR by determination of the Executive Director with concurrence by resolution of the Board of Supervisors of San Luis Obispo County.

EXHIBIT A-2



- LEGEND**
- SVR A BOUNDARY LINE
 - - - EXISTING FENCE TO REMAIN IN PLACE
 - ~ ~ ~ TRAIL OPENINGS TO BE FENCED OFF
 - NEW FENCE TO BE INSTALLED
 - EXISTING FENCE TO BE REMOVED
 - VEGETATION AREA



CDP 4-82-300-A4, approved in 1991

1. Staging Area Location:

A. An interim OHV staging area shall be operational no later than September 15th 1982 in a designated area on or adjacent to the beach south of the two mile post (Exhibit C). This staging area shall remain operational subject to the stated conditions and standards herein until such time as a permanent staging area is constructed.

Upon implementation of the interim staging area, all OHVs, ATCs and other non-street legal vehicles shall be trailored to and from Grande and Pier Avenues. At all times such vehicles when under their own power, shall be prohibited north of the northerly terminus of Sand Highway.

B. A permanent staging area site shall be selected as expeditiously as possible but in no case later than 18 months from the effective date of the County's LUP certification consistent with the following standards. Construction of this permanent staging area shall begin no later than three (3) years from the date of the certification of the County's LUP of its LCP. If construction and operation of a permanent staging area cannot be accomplished within the above time limits, this permit shall be subject to review and modification if necessary or appropriate by the County or the Commission or either in consultation with the other. Prior to construction, the County's LUP and the State Parks General Development Plan shall be amended to include the selected site with all additional standards or conditions for its design and operation. At the present time, there are several known locations which shall be considered and evaluated for staging area use, these locations are: Callendar Road area; the stables/agricultural lands area south of Arroyo Grande Creek; Agricultural lands north of Oso Flaco Creek adjacent to the Union Oil property; on the beach as per the interim staging area described herein (see Exhibit C). Other potential sites may also be evaluated. The site selection process shall include an environmental impacts analysis adequate to enable the selection of the least environmentally damaging location for the use. Accordingly, the on and off-site impacts of each alternative shall be measured against the impacts of the others. In selecting the site and amending the County's LUP and the State Parks General Development Plan to incorporate the selected site, the following standards must be found to have been met: 1) that the site selected is the least environmentally damaging alternative; and 2) that all feasible design and operational related mitigations have been incorporated to minimize adverse environmental impacts. Additional standards for site selection are in their order of importance: locating a site which reduces to the maximum extent feasible OHV related impacts to the residential character of the community of Oceano; locating a site which facilitates the successful separation and regulation of recreational uses within the park itself; locating a site which can be constructed and operational expeditiously.

C. Oso Flaco Lakes Area: An off-highway vehicle staging area shall not be constructed at the Oso Flaco Lake site indicated on Exhibit C. As part of the fencing proposed in this project, the Oso Flaco causeway to the PSVRA shall be permanently closed to vehicular traffic. Pedestrian and equestrian access only shall be allowed over

the causeway or in the vicinity of the Oso Flaco Lakes effective no later than March 1, 1992.

By acceptance of this permit the applicant agrees to not close equestrian access at Oso Flaco Lake until March 1, 1992 or sooner if an alternative equestrian access solution is identified. The intent of this condition is to allow additional time for all parties involved in the attempt to locate alternative access routes to the beach to identify a site which would be suitable and acceptable to the Commission. The Commission will review and make a decision on the appropriateness of that site at a subsequent date. If an alternative equestrian access route is identified prior to March 1, 1992, the applicant will submit the proposed route to the Commission for its review and approval at a subsequent date. In the event an alternative equestrian access route is not identified, equestrian access through Oso Flaco Lake Natural Area can be closed on March 1, 1992.

The state owned agricultural lands south of Oso Flaco Lakes may be utilized for the development of a campground for passive recreational use of the dune areas within the Park excluded from OHV use. The State Parks and Recreation Department shall amend its General Development Plan accordingly. Uses in this camping area shall be permitted only if consistent with the resource protection policies of the San Luis Obispo County Land Use Plan; 100 foot buffering setbacks from the lakes, creek and wetlands shall be applied at a minimum with greater setbacks required if necessary, only resource dependent uses and passive recreational activities shall be permitted.

2. Control of Access to the Park: Effective immediately upon issuance of this permit and until either a permanent staging area is operational or this permit and the County's LUP is amended to accommodate possible necessary minor adjustments in the operation of these conditions, access and egress to and from the park shall be controlled and monitored in the following manner:
 - A. All vehicular access and egress shall be via Grande Avenue and Pier Avenue, an effective vehicle barriers shall be placed at the southern end of the Oso Flaco causeway to assure that no OHV access over the causeway is permitted.
 - B. Manned vehicle contact stations (kiosks) shall be placed at the Pier and Grande Avenue access points.
 - C. Equestrian Gate: The applicant within sixty (60) days of approval (by November 10, 1991) shall reconstruct a portion of the existing fence along the southern Pismo Dunes State Vehicle Recreation Area (SVRA) boundary to allow equestrians and pedestrians to pass along the beach, while preventing passage by off-highway vehicles.

3. Control of uses within the Park: By the July 4 week-end of 1982 and as soon as possible prior to that date, the Parks and Recreation Department shall institute a Public Information program for vehicular recreational users within the Parks units. At the Grande and Pier Avenue's kiosks, occupants of all vehicles entering the Park will be provided a pass or ticket to the park and the following information:

- A. The following rules are effective immediately with violators subject to citation and fines:
- All non-street legal vehicles shall be prohibited from the area north of the two mile post after dusk each day.
 - Vegetated dune areas, whether they are fenced or unfenced, are strictly off-limits to all vehicles.
 - All areas posted as Private Property or Restricted Use are off-limits to vehicle activity.
 - All vehicle activity is prohibited south of the Oso Flaco Creek (or south of the fence line that is constructed).
- B. Beginning with the 4th of July weekend 1983 Beach Camping within the Park units shall be restricted to a maximum of 1,000 units* with each unit available only through a reservation obtained through the State Parks Reservation System (Ticketron). Thereafter, admittance to the Park for the purpose of overnight camping will be denied to individuals without a valid reservation unless vacant unreserved camping spaces are available.
- *One unit equals a campsite for a single camper vehicle.
- C. Beginning September 15, 1982, specific areas of the Park will be designated for specific types of vehicles. The designations will be as follows:
- Area north of the two mile post to Grande Avenue designated for and restricted to street legal vehicle use.
 - Area south of the two mile post to the fenced or posted area north of Oso Flaco Creek designated for OHV use.
- D. On or before January 1983, the following will occur: OHV day use will be limited to a specified number of users established in consultation with agreement by the County of San Luis Obispo and the Executive Director of the Coastal Commission and the Department of State Parks. OHV day use fees may be collected.
- E. Protective Fencing of Dunes, archeological resources, and wet environments shall be accomplished in the following manner subject to review and approval by the Executive Director of the Coastal Commission in consultation with the County of San Luis Obispo and the State Department of Fish and Game.
- (a) Fencing proposed and approved herein, plus fencing of the area shown on Exhibit A-2 plus the perimeter fencing along the Sand Highway (or along the ridge just eastward of the Sand Highway) and the Eastern Boundary of ODSVRA shall be accomplished by November 30, 1982. All other vegetated areas indicated on Exhibit A-2 shall be fenced by Aug 31, 1983.
- (b) One primary objective of the fencing is to prohibit vehicle access to the dune area south of Oso Flaco Creek. Accordingly, the east/west aligned fence north of Oso Flaco Creek shall continue seaward to the mean low water line so that vehicles do

not pass to the south. The continuation of this line to mean low water may require different construction than normal fencing – possibly driven piles.

- (c) Except for the following, fencing alignments shall be placed a minimum of 100 feet from the vegetated areas being fenced:
1. Along Sand Highway where the fence would encroach into the Sand Highway travel corridor.
 2. Along the seaward side of the foredunes paralleling the beach where fencing may be placed in a manner similar to that already existing along the westerly line of the State Dune Preserve except that a minimal number of breaks in the foredune fencing outside of the dune preserve may be allowed of OHV access to the backdune area. The fencing protecting the foredunes need not be a closed perimeter fence completely surrounding the foredune vegetation if it can be demonstrated to the Executive Director that such perimeter fencing is not necessary for effective preservation and stabilization of foredunes.
 3. In other areas where it is demonstrated that a placement closer to vegetation will not diminish the effectiveness of the fence to stabilize the dune, protect the vegetation and provide necessary conditions for dune rehabilitation and restoration. Said demonstration shall be in the form of competent analysis of the dynamics of dune sand transport and natural condition necessary for dune stabilization. Reduction in the minimum setback under this condition shall be reviewed and approved by the Executive Director of the Coastal Commission.
- (d) If fenced corridors to the Oso Flaco are constructed, they shall only be for use of state parks personnel and for the purpose of emergency, normal patrol duties, management and enforcement. Accordingly, these corridors shall have locked gates.
- (e) Since a barrier to OHV movement south of Oso Flaco Creek is to be constructed on the north side of the creek, any construction of fencing south of Oso Flaco Creek or lakes shall be only for the purpose of preventing OHV intrusion into the State Park holdings from adjacent private lands. Such fencing shall therefore be perimeter fencing around parcels 8, 7, 3, and 4 and shall require a coastal development permit. Fencing applied for herein south of Oso Flaco which is not perimeter fencing shall not be constructed, or if constructed shall have been to an alignment approved herein by November 30, 1982.

4. Restoration

A dunes restoration program shall be undertaken by the DPR. The program shall be reviewed and approved by the Executive Director of the Coastal Commission. Restoration of vegetated dunes within the fenced-off areas shall be undertaken as expeditiously as funds and technical knowledge allows. Plantings shall begin no later

than January 1983 with notification of the County and the Executive Director of the Coastal Commission. The restoration program shall be an ongoing program with the experimental or initial phase completed within three (3) years of the date of certification of the LUP and the full program in effect on that date or before.

5. Protection of Archeological Resources

Archeological resources within the PDVRA shall be protected by fencing. Accordingly, as part of the current fencing project, site No. SLO 199 shall be fenced for protection. Other sites shall be fenced as their locations become known.

6. Six months after the issuance of this permit, and annually thereafter (or as needed) until a permanent staging area is operational, a formal review of the effectiveness of the conditions of the permit shall take place. This review shall be undertaken jointly by designated representatives of the California Coastal Commission, the California Department of Fish and Game, the County of San Luis Obispo, the Community of Oceano, the California Department of Parks and Recreation and user groups.

If, after an annual (or any other) review it is found that the ORV use within the SVRA is not occurring in a manner that protects environmentally sensitive habitats and community values consistent with the conditions of this permit and the County's Local Coastal Plan, then OHV access and the number of camp units allowed may be further limited by the Executive Director with concurrence by resolution of the Board of Supervisors of San Luis Obispo County. If the above reviews find that OHV use in the SVRA is consistent with the protection of environmentally sensitive habitats and community values, and/or that additional staff and management revenues become available to the DPR, levels of OHV access and the allowable number of camp units may be increased not to exceed the enforcement and management capabilities of the DPR by determination of the Executive Director with concurrence by resolution of the Board of Supervisors of San Luis Obispo County.

CDP 4-82-300-A5, approved in 2001

1. Staging Area Location:

A. An interim OHV staging area shall be operational no later than September 15th 1982 in a designated area on or adjacent to the beach south of the two mile post (Exhibit C). This staging area shall remain operational subject to the stated conditions and standards herein until such time as a permanent staging area is constructed.

Upon implementation of the interim staging area, all OHVs, ATCs and other non-street legal vehicles shall be trailored to and from Grande and Pier Avenues. At all times such vehicles when under their own power, shall be prohibited north of the northerly terminus of Sand Highway.

B. A permanent staging area site shall be selected as expeditiously as possible but in no case later than 18 months from the effective date of the County's LUP certification consistent with the following standards. Construction of this permanent staging area shall begin no later than three (3) years from the date of the certification of the County's LUP of its LCP. If construction and operation of a permanent staging area cannot be accomplished within the above time limits, this permit shall be subject to review and modification if necessary or appropriate by the County or the Commission or either in consultation with the other. Prior to construction, the County's LUP and the State Parks General Development Plan shall be amended to include the selected site with all additional standards or conditions for its design and operation. At the present time, there are several known locations which shall be considered and evaluated for staging area use, these locations are: Callendar Road area; the stables/agricultural lands area south of Arroyo Grande Creek; Agricultural lands north of Oso Flaco Creek adjacent to the Union Oil property; on the beach as per the interim staging area described herein (see Exhibit C). Other potential sites may also be evaluated. The site selection process shall include an environmental impacts analysis adequate to enable the selection of the least environmentally damaging location for the use. Accordingly, the on and off-site impacts of each alternative shall be measured against the impacts of the others. In selecting the site and amending the County's LUP and the State Parks General Development Plan to incorporate the selected site, the following standards must be found to have been met: 1) that the site selected is the least environmentally damaging alternative; and 2) that all feasible design and operational related mitigations have been incorporated to minimize adverse environmental impacts. Additional standards for site selection are in their order of importance: locating a site which reduces to the maximum extent feasible OHV related impacts to the residential character of the community of Oceano; locating a site which facilitates the successful separation and regulation of recreational uses within the park itself; locating a site which can be constructed and operational expeditiously.

C. Oso Flaco Lakes Area: An off-highway vehicle staging area shall not be constructed at the Oso Flaco Lake site indicated on Exhibit C. As part of the fencing proposed in this project, the Oso Flaco causeway to the PSVRA shall be permanently closed to vehicular traffic. Pedestrian and equestrian access only shall be allowed over

the causeway or in the vicinity of the Oso Flaco Lakes effective no later than March 1, 1992.

By acceptance of this permit the applicant agrees to not close equestrian access at Oso Flaco Lake until March 1, 1992 or sooner if an alternative equestrian access solution is identified. The intent of this condition is to allow additional time for all parties involved in the attempt to locate alternative access routes to the beach to identify a site which would be suitable and acceptable to the Commission. The Commission will review and make a decision on the appropriateness of that site at a subsequent date. If an alternative equestrian access route is identified prior to March 1, 1992, the applicant will submit the proposed route to the Commission for its review and approval at a subsequent date. In the event an alternative equestrian access route is not identified, equestrian access through Oso Flaco Lake Natural Area can be closed on March 1, 1992.

The state owned agricultural lands south of Oso Flaco Lakes may be utilized for the development of a campground for passive recreational use of the dune areas within the Park excluded from OHV use. The State Parks and Recreation Department shall amend its General Development Plan accordingly. Uses in this camping area shall be permitted only if consistent with the resource protection policies of the San Luis Obispo County Land Use Plan; 100 foot buffering setbacks from the lakes, creek and wetlands shall be applied at a minimum with greater setbacks required if necessary, only resource dependent uses and passive recreational activities shall be permitted.

2. Control of Access to the Park: Effective immediately upon issuance of this permit and until either a permanent staging area is operational or this permit and the County's LUP is amended to accommodate possible necessary minor adjustments in the operation of these conditions, access and egress to and from the park shall be controlled and monitored in the following manner:
 - A. All vehicular access and egress shall be via Grande Avenue and Pier Avenue, an effective vehicle barriers shall be placed at the southern end of the Oso Flaco causeway to assure that no OHV access over the causeway is permitted.
 - B. Manned vehicle contact stations (kiosks) shall be placed at the Pier and Grande Avenue access points.
 - C. Equestrian Gate: The applicant within sixty (60) days of approval (by November 10, 1991) shall reconstruct a portion of the existing fence along the southern Pismo Dunes State Vehicle Recreation Area (SVRA) boundary to allow equestrians and pedestrians to pass along the beach, while preventing passage by off-highway vehicles.

3. Control of uses within the Park: By the July 4 week-end of 1982 and as soon as possible prior to that date, the Parks and Recreation Department shall institute a Public Information program for vehicular recreational users within the Parks units. At the Grande and Pier Avenue's kiosks, occupants of all vehicles entering the Park will be provided a pass or ticket to the park and the following information:

- A. The following rules are effective immediately with violators subject to citation and fines:
- All non-street legal vehicles shall be prohibited from the area north of the two mile post after dusk each day.
 - Vegetated dune areas, whether they are fenced or unfenced, are strictly off-limits to all vehicles.
 - All areas posted as Private Property or Restricted Use are off-limits to vehicle activity.
 - All vehicle activity is prohibited south of the Oso Flaco Creek (or south of the fence line that is constructed).

~~B. Beginning with the 4th of July weekend 1983 Beach Camping within the Park units shall be restricted to a maximum of 1,000 units* with each unit available only through a reservation obtained through the State Parks Reservation System (Ticketron). Thereafter, admittance to the Park for the purpose of overnight camping will be denied to individuals without a valid reservation unless vacant unreserved camping spaces are available.~~

~~*One unit equals a campsite for a single camper vehicle.~~

- C. Beginning September 15, 1982, specific areas of the Park will be designated for specific types of vehicles. The designations will be as follows:
- Area north of the two mile post to Grande Avenue designated for and restricted to street legal vehicle use.
 - Area south of the two mile post to the fenced or posted area north of Oso Flaco Creek designated for OHV use.
- ~~D. On or before January 1983, the following will occur: OHV day use will be limited to a specified number of users established in consultation with agreement by the County of San Luis Obispo and the Executive Director of the Coastal Commission and the Department of State Parks. OHV day use fees may be collected.~~
- E. Protective Fencing of Dunes, archeological resources, and wet environments shall be accomplished in the following manner subject to review and approval by the Executive Director of the Coastal Commission in consultation with the County of San Luis Obispo and the State Department of Fish and Game.
- (a) Fencing proposed and approved herein, plus fencing of the area shown on Exhibit A-2 plus the perimeter fencing along the Sand Highway (or along the ridge just eastward of the Sand Highway) and the Eastern Boundary of ODSVRA shall be accomplished by November 30, 1982. All other vegetated areas indicated on Exhibit A-2 shall be fenced by Aug 31, 1983.
- (b) One primary objective of the fencing is to prohibit vehicle access to the dune area south of Oso Flaco Creek. Accordingly, the east/west aligned fence north of Oso Flaco Creek shall continue seaward to the mean low water line so that vehicles do

not pass to the south. The continuation of this line to mean low water may require different construction than normal fencing – possibly driven piles.

- (c) Except for the following, fencing alignments shall be placed a minimum of 100 feet from the vegetated areas being fenced:
1. Along Sand Highway where the fence would encroach into the Sand Highway travel corridor.
 2. Along the seaward side of the foredunes paralleling the beach where fencing may be placed in a manner similar to that already existing along the westerly line of the State Dune Preserve except that a minimal number of breaks in the foredune fencing outside of the dune preserve may be allowed of OHV access to the backdune area. The fencing protecting the foredunes need not be a closed perimeter fence completely surrounding the foredune vegetation if it can be demonstrated to the Executive Director that such perimeter fencing is not necessary for effective preservation and stabilization of foredunes.
 3. In other areas where it is demonstrated that a placement closer to vegetation will not diminish the effectiveness of the fence to stabilize the dune, protect the vegetation and provide necessary conditions for dune rehabilitation and restoration. Said demonstration shall be in the form of competent analysis of the dynamics of dune sand transport and natural condition necessary for dune stabilization. Reduction in the minimum setback under this condition shall be reviewed and approved by the Executive Director of the Coastal Commission.
- (d) If fenced corridors to the Oso Flaco are constructed, they shall only be for use of state parks personnel and for the purpose of emergency, normal patrol duties, management and enforcement. Accordingly, these corridors shall have locked gates.
- (e) Since a barrier to OHV movement south of Oso Flaco Creek is to be constructed on the north side of the creek, any construction of fencing south of Oso Flaco Creek or lakes shall be only for the purpose of preventing OHV intrusion into the State Park holdings from adjacent private lands. Such fencing shall therefore be perimeter fencing around parcels 8, 7, 3, and 4 and shall require a coastal development permit. Fencing applied for herein south of Oso Flaco which is not perimeter fencing shall not be constructed, or if constructed shall have been to an alignment approved herein by November 30, 1982.

4. Restoration

A dunes restoration program shall be undertaken by the DPR. The program shall be reviewed and approved by the Executive Director of the Coastal Commission. Restoration of vegetated dunes within the fenced-off areas shall be undertaken as expeditiously as funds and technical knowledge allows. Plantings shall begin no later

than January 1983 with notification of the County and the Executive Director of the Coastal Commission. The restoration program shall be an ongoing program with the experimental or initial phase completed within three (3) years of the date of certification of the LUP and the full program in effect on that date or before.

5. Protection of Archeological Resources

Archeological resources within the PDVRA shall be protected by fencing. Accordingly, as part of the current fencing project, site No. SLO 199 shall be fenced for protection. Other sites shall be fenced as their locations become known.

6. ~~Six months after the issuance of this permit, and annually thereafter (or as needed) until a permanent staging area is operational, a formal review of the effectiveness of the conditions of the permit shall take place. This review shall be undertaken jointly by designated representatives of the California Coastal Commission, the California Department of Fish and Game, the County of San Luis Obispo, the Community of Oceano, the California Department of Parks and Recreation and user groups.~~

~~If, after an annual (or any other) review it is found that the ORV use within the SVRA is not occurring in a manner that protects environmentally sensitive habitats and community values consistent with the conditions of this permit and the County's Local Coastal Plan, then OHV access and the number of camp units allowed may be further limited by the Executive Director with concurrence by resolution of the Board of Supervisors of San Luis Obispo County. If the above reviews find that OHV use in the SVRA is consistent with the protection of environmentally sensitive habitats and community values, and/or that additional staff and management revenues become available to the DPR, levels of OHV access and the allowable number of camp units may be increased not to exceed the enforcement and management capabilities of the DPR by determination of the Executive Director with concurrence by resolution of the Board of Supervisors of San Luis Obispo County.~~

SPECIAL CONDITIONS OF APPROVAL

1. Scope of Permit. This permit amendment replaces Special Conditions 3B, 3D, and 6 of CDP 4-82-300. This permit amendment also authorizes the institution of interim vehicle (street-legal, off-highway vehicle, and camping) limits at the ODSVRA, and the establishment of an ODSVRA Technical Review Team, for an initial one-year period form the date of approval of the revised conditions and findings.
2. 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, the amendment will remain in effect for another year. Otherwise, an alternative approach to resource management, or set of management measures, may be instituted through this review process.
3. Interim Vehicle Limits

- a. Interim Day-Use Vehicle Limits. Except as qualified by 3d, interim limits on motor vehicle use on the beaches and dunes of Oceano Dunes SVRA shall be no more than 2,580 street-legal vehicles per day. This limit does not include off-highway vehicles, or street-legal vehicles attributable to allowed overnight camper use within the ODSVRA.
 - b. Interim Camping Limits. Except as qualified by 3d, interim limits on overnight motor vehicle use on the beaches and dunes of Ocean Dunes SVRA shall be no more than 1,000 camping units (i.e. 1,000 street-legal vehicles) per night. This limit does not include off-highway vehicles or street-legal vehicles attributable to allowed day-use within the ODSVRA.
 - c. Interim Off-Highway Vehicle Limits. Except as qualified by 3d, interim limits on off-highway vehicle use on the beaches and dunes of Oceano Dunes SVRA shall be no more than 1,720 off-highway vehicles at any given time. This limit does not include the street-legal vehicles used to tow or trailer the OHVs into the ODSVRA.
 - d. Holiday Periods¹. Interim street-legal and off-highway vehicle limits may be exceeded only during the four major holiday periods of Memorial Day (Saturday through Monday), July 4th (one day and any adjacent weekend days), Labor Day (Saturday through Monday), and Thanksgiving (Thursday through Sunday).
4. Technical Review Team. The Technical Review Team (TRT), advisory to the Superintendent of the Oceano Dunes State Vehicular Recreation Area, shall be established within three months, and shall meet within six months, from approval of the revised conditions and findings of this coastal development permit amendment (4-82-300-A5). A Charter for the TRT, establishing members, roles and procedures for the Team, shall be submitted to the Executive Director for review within one year of approval of the revised conditions and findings of this coastal development permit amendment.
- a. The Charter shall establish a specific structure and process in order for the TRT to do at least the following:
 - i. Assist in building community support through problem solving, consensus building, new constituency development, and increasing understanding about the ODSVRA; and
 - ii. Develop recommendations to the Superintendent of the ODSVRA regarding additional monitoring studies, adjustments to day and overnight use limits, and management strategies.
 - b. The Charter shall also include at least the following:
 - i. A provision to create a scientific subcommittee to identify, develop and evaluate the scientific information needed by decision-makers to ensure that the ODSVRA's natural resources are adequately managed and protected. The subcommittee shall be composed of resource experts representing the five government agencies (CCC, SLO County, USFWS, DFG, DPR) and at least two independent scientists with expertise in

¹ These exceedance periods are no longer allowed under terms of settlement agreement entered into by Parks.

- Western snowy plover, California least tern, steelhead trout or other species of concern, as well as ecological processes to analyze technical data and provide scientific recommendations to the TRT; and
- ii. A provision to submit a list of proposed members of the scientific subcommittee to the Executive Director for review and approval.
- c. The Charter shall establish a specific structure and process in order for the scientific subcommittee to do at least the following:
- i. Recommend to the TRT the scientific studies and investigations that may be necessary to develop information needed by resource managers;
 - ii. Advise the TRT regarding the protection of the SVRA's natural resources by helping identify and review needed research measures and restoration efforts to rebuild or protect the ODSVRA natural resources;
 - iii. Evaluate monitoring results and reevaluate monitoring protocols contained in Oceano Dunes SVRA annual reports for the Habitat Monitoring System, reports on the breeding, nesting and fledgling success of the western snowy plover and California least tern populations in the SVRA, and other reports related to the environmental impacts of recreational activities;
 - iv. Provide comments on the adequacy of various scientific research studies and make management recommendations to the TRT; and
 - v. Submit the full recommendations of the scientific subcommittee to the Commission and make them available to the public, as part of the annual review process required in Special Condition 2.
5. Annual Report. The TRT and the ODSVRA Superintendent shall prepare annual reports (for the period of October to September) summarizing annual recreational use and habitat trends at the Park; and highlighting the TRT's major accomplishments (including progress made towards meeting the objectives of the TRT), projects, correspondence, and recommendations as well as a summary of subcommittees, working groups, and task force activities. The first annual report shall include (1) a draft or final Charter for the TRT, and (2) a description of the process by which the TRT will rank research and management questions and priorities. The second annual report shall include (1) the final Charter for the TRT (if not submitted with the first annual report), (2) the TRT's ranking of research and management questions and priorities, and (3) a scope of work for those projects identified as highest priority. Subsequent reports will include a status report on the progress of those projects as well as updates to research and management priorities and the corresponding scopes of work for addressing those new priorities. One component of the Commission's annual review will be to evaluate the progress of the TRT's work as measured against the submitted work plans.

In identifying and selecting the priority research and management questions and projects, the TRT shall consider information developed by the USFWS and shall include the following:

- a. Appropriate management techniques for the western snowy plover, California least tern, and steelhead trout including an evaluation of:

- i. How the geographic location of nests, proximity of nests to foraging areas, and nest closure techniques affect the hatching and fledgling success of the species.
 - ii. What studies may be necessary to determine appropriate management techniques, or what known management techniques could be put in place, for protecting each species of concern, and
 - iii. The potential environmental, recreational and economic costs and benefits of alternative beach/dune habitat protection strategies.
- b. Appropriate management techniques for protecting water quality and dune habitats from potential pollutants that might result from motor vehicle fluids or other contaminants that might enter the ODSVRA and ocean through polluted runoff or direct discharges; and
- c. The success of past revegetation efforts within the ODSVRA and the potential need for continuing or expanding those efforts, including expansion of vegetation enclosures.
- d. 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.

If alternative research and management questions and projects are identified as a higher priority than those listed in a through d above, the annual reports shall discuss the basis for such a determination. Annual reports shall be submitted to San Luis Obispo County and California Coastal Commission for informational purposes no later than January 1st of the following year. The first annual report (or portion thereof) shall be completed and submitted to the Commission no later than January 1, 2002.

CDP 4-82-300 Conditions (through 4-82-300-A5)

1. Staging Area Location:

A. An interim OHV staging area shall be operational no later than September 15th 1982 in a designated area on or adjacent to the beach south of the two mile post (Exhibit C). This staging area shall remain operational subject to the stated conditions and standards herein until such time as a permanent staging area is constructed.

Upon implementation of the interim staging area, all OHVs, ATCs and other non-street legal vehicles shall be trailored to and from Grande and Pier Avenues. At all times such vehicles when under their own power, shall be prohibited north of the northerly terminus of Sand Highway.

B. A permanent staging area site shall be selected as expeditiously as possible but in no case later than 18 months from the effective date of the County's LUP certification consistent with the following standards. Construction of this permanent staging area shall begin no later than three (3) years from the date of the certification of the County's LUP of its LCP. If construction and operation of a permanent staging area cannot be accomplished within the above time limits, this permit shall be subject to review and modification if necessary or appropriate by the County or the Commission or either in consultation with the other. Prior to construction, the County's LUP and the State Parks General Development Plan shall be amended to include the selected site with all additional standards or conditions for its design and operation. At the present time, there are several known locations which shall be considered and evaluated for staging area use, these locations are: Callendar Road area; the stables/agricultural lands area south of Arroyo Grande Creek; Agricultural lands north of Oso Flaco Creek adjacent to the Union Oil property; on the beach as per the interim staging area described herein (see Exhibit C). Other potential sites may also be evaluated. The site selection process shall include an environmental impacts analysis adequate to enable the selection of the least environmentally damaging location for the use. Accordingly, the on and off-site impacts of each alternative shall be measured against the impacts of the others. In selecting the site and amending the County's LUP and the State Parks General Development Plan to incorporate the selected site, the following standards must be found to have been met: 1) that the site selected is the least environmentally damaging alternative; and 2) that all feasible design and operational related mitigations have been incorporated to minimize adverse environmental impacts. Additional standards for site selection are in their order of importance: locating a site which reduces to the maximum extent feasible OHV related impacts to the residential character of the community of Oceano; locating a site which facilitates the successful separation and regulation of recreational uses within the park itself; locating a site which can be constructed and operational expeditiously.

C. Oso Flaco Lakes Area: An off-highway vehicle staging area shall not be constructed at the Oso Flaco Lake site indicated on Exhibit C. As part of the fencing proposed in this project, the Oso Flaco causeway to the PSVRA shall be permanently closed to vehicular traffic. Pedestrian and equestrian access only shall be allowed over

the causeway or in the vicinity of the Oso Flaco Lakes effective no later than March 1, 1992.

By acceptance of this permit the applicant agrees to not close equestrian access at Oso Flaco Lake until March 1, 1992 or sooner if an alternative equestrian access solution is identified. The intent of this condition is to allow additional time for all parties involved in the attempt to locate alternative access routes to the beach to identify a site which would be suitable and acceptable to the Commission. The Commission will review and make a decision on the appropriateness of that site at a subsequent date. If an alternative equestrian access route is identified prior to March 1, 1992, the applicant will submit the proposed route to the Commission for its review and approval at a subsequent date. In the event an alternative equestrian access route is not identified, equestrian access through Oso Flaco Lake Natural Area can be closed on March 1, 1992.

The state owned agricultural lands south of Oso Flaco Lakes may be utilized for the development of a campground for passive recreational use of the dune areas within the Park excluded from OHV use. The State Parks and Recreation Department shall amend its General Development Plan accordingly. Uses in this camping area shall be permitted only if consistent with the resource protection policies of the San Luis Obispo County Land Use Plan; 100 foot buffering setbacks from the lakes, creek and wetlands shall be applied at a minimum with greater setbacks required if necessary, only resource dependent uses and passive recreational activities shall be permitted.

2. Control of Access to the Park: Effective immediately upon issuance of this permit and until either a permanent staging area is operational or this permit and the County's LUP is amended to accommodate possible necessary minor adjustments in the operation of these conditions, access and egress to and from the park shall be controlled and monitored in the following manner:
 - A. All vehicular access and egress shall be via Grande Avenue and Pier Avenue, an effective vehicle barriers shall be placed at the southern end of the Oso Flaco causeway to assure that no OHV access over the causeway is permitted.
 - B. Manned vehicle contact stations (kiosks) shall be placed at the Pier and Grande Avenue access points.
 - C. Equestrian Gate: The applicant within sixty (60) days of approval (by November 10, 1991) shall reconstruct a portion of the existing fence along the southern Pismo Dunes State Vehicle Recreation Area (SVRA) boundary to allow equestrians and pedestrians to pass along the beach, while preventing passage by off-highway vehicles.

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- A. The following rules are effective immediately with violators subject to citation and fines:
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 - Vegetated dune areas, whether they are fenced or unfenced, are strictly off-limits to all vehicles.
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- (b) One primary objective of the fencing is to prohibit vehicle access to the dune area south of Oso Flaco Creek. Accordingly, the east/west aligned fence north of Oso Flaco Creek shall continue seaward to the mean low water line so that vehicles do not pass to the south. The continuation of this line to mean low water may require different construction than normal fencing – possibly driven piles.
- (c) Except for the following, fencing alignments shall be placed a minimum of 100 feet from the vegetated areas being fenced:
1. Along Sand Highway where the fence would encroach into the Sand Highway travel corridor.
 2. Along the seaward side of the foredunes paralleling the beach where fencing may be placed in a manner similar to that already existing along the westerly line of the State Dune Preserve except that a minimal number of breaks in the foredune fencing outside of the dune preserve may be allowed of OHV access to the backdune area. The fencing protecting the foredunes need not be a

closed perimeter fence completely surrounding the foredune vegetation if it can be demonstrated to the Executive Director that such perimeter fencing is not necessary for effective preservation and stabilization of foredunes.

3. In other areas where it is demonstrated that a placement closer to vegetation will not diminish the effectiveness of the fence to stabilize the dune, protect the vegetation and provide necessary conditions for dune rehabilitation and restoration. Said demonstration shall be in the form of competent analysis of the dynamics of dune sand transport and natural condition necessary for dune stabilization. Reduction in the minimum setback under this condition shall be reviewed and approved by the Executive Director of the Coastal Commission.

(d) If fenced corridors to the Oso Flaco are constructed, they shall only be for use of state parks personnel and for the purpose of emergency, normal patrol duties, management and enforcement. Accordingly, these corridors shall have locked gates.

(e) Since a barrier to OHV movement south of Oso Flaco Creek is to be constructed on the north side of the creek, any construction of fencing south of Oso Flaco Creek or lakes shall be only for the purpose of preventing OHV intrusion into the State Park holdings from adjacent private lands. Such fencing shall therefore be perimeter fencing around parcels 8, 7, 3, and 4 and shall require a coastal development permit. Fencing applied for herein south of Oso Flaco which is not perimeter fencing shall not be constructed, or if constructed shall have been to an alignment approved herein by November 30, 1982.

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3. Interim Vehicle Limits
 - a. Interim *Day-Use Vehicle Limits*. Except as qualified by 3d, interim limits on motor vehicle use on the beaches and dunes of Oceano Dunes SVRA shall be no more than 2,580 street-legal vehicles per day. This limit does not include off-highway vehicles, or street-legal vehicles attributable to allowed overnight camper use within the ODSVRA.
 - b. Interim Camping Limits. Except as qualified by 3d, interim limits on overnight motor vehicle use on the beaches and dunes of Ocean Dunes SVRA shall be no more than 1,000 camping units (i.e. 1,000 street-legal vehicles) per night. This limit does not include off-highway vehicles or street-legal vehicles attributable to allowed day-use within the ODSVRA.
 - c. Interim Off-Highway Vehicle Limits. Except as qualified by 3d, interim limits on off-highway vehicle use on the beaches and dunes of Oceano Dunes SVRA shall be no more than 1,720 off-highway vehicles at any given time. This limit does not include the street-legal vehicles used to tow or trailer the OHVs into the ODSVRA.
 - d. Holiday Periods¹. Interim street-legal and off-highway vehicle limits may be exceeded only during the four major holiday periods of Memorial Day (Saturday through Monday), July 4th (one day and any adjacent weekend days), Labor Day (Saturday through Monday), and Thanksgiving (Thursday through Sunday).
4. Technical Review Team. The Technical Review Team (TRT), advisory to the Superintendent of the Oceano Dunes State Vehicular Recreation Area, shall be established within three months, and shall meet within six months, from approval of the revised conditions and findings of this coastal development permit amendment (4-82-300-A5). A Charter for the TRT, establishing members, roles and procedures for the Team, shall be submitted to the Executive Director for review within one year of approval of the revised conditions and findings of this coastal development permit amendment.
 - a. The Charter shall establish a specific structure and process in order for the TRT to do at least the following:

¹ These exceedance periods are no longer allowed under terms of settlement agreement entered into by Parks.

- i. Assist in building community support through problem solving, consensus building, new constituency development, and increasing understanding about the ODSVRA; and
 - ii. Develop recommendations to the Superintendent of the ODSVRA regarding additional monitoring studies, adjustments to day and overnight use limits, and management strategies.
 - b. The Charter shall also include at least the following:
 - i. A provision to create a scientific subcommittee to identify, develop and evaluate the scientific information needed by decision-makers to ensure that the ODSVRA's natural resources are adequately managed and protected. The subcommittee shall be composed of resource experts representing the five government agencies (CCC, SLO County, USFWS, DFG, DPR) and at least two independent scientists with expertise in Western snowy plover, California least tern, steelhead trout or other species of concern, as well as ecological processes to analyze technical data and provide scientific recommendations to the TRT; and
 - ii. A provision to submit a list of proposed members of the scientific subcommittee to the Executive Director for review and approval.
 - c. The Charter shall establish a specific structure and process in order for the scientific subcommittee to do at least the following:
 - i. Recommend to the TRT the scientific studies and investigations that may be necessary to develop information needed by resource managers;
 - ii. Advise the TRT regarding the protection of the SVRA's natural resources by helping identify and review needed research measures and restoration efforts to rebuild or protect the ODSVRA natural resources;
 - iii. Evaluate monitoring results and reevaluate monitoring protocols contained in Oceano Dunes SVRA annual reports for the Habitat Monitoring System, reports on the breeding, nesting and fledgling success of the western snowy plover and California least tern populations in the SVRA, and other reports related to the environmental impacts of recreational activities;
 - iv. Provide comments on the adequacy of various scientific research studies and make management recommendations to the TRT; and
 - v. Submit the full recommendations of the scientific subcommittee to the Commission and make them available to the public, as part of the annual review process required in Special Condition 2.
5. Annual Report. The TRT and the ODSVRA Superintendent shall prepare annual reports (for the period of October to September) summarizing annual recreational use and habitat trends at the Park; and highlighting the TRT's major accomplishments (including progress made towards meeting the objectives of the TRT), projects, correspondence, and recommendations as well as a summary of subcommittees, working groups, and task force activities. The first annual report shall include (1) a draft or final Charter for the TRT, and (2) a description of the process by which the TRT will rank research and management questions and priorities. The second annual report shall include (1) the final Charter for the TRT (if not submitted with the first annual report), (2) the TRT's ranking

of research and management questions and priorities, and (3) a scope of work for those projects identified as highest priority. Subsequent reports will include a status report on the progress of those projects as well as updates to research and management priorities and the corresponding scopes of work for addressing those new priorities. One component of the Commission's annual review will be to evaluate the progress of the TRT's work as measured against the submitted work plans.

In identifying and selecting the priority research and management questions and projects, the TRT shall consider information developed by the USFWS and shall include the following:

- a. Appropriate management techniques for the western snowy plover, California least tern, and steelhead trout including an evaluation of:
 - i. How the geographic location of nests, proximity of nests to foraging areas, and nest closure techniques affect the hatching and fledgling success of the species,
 - ii. What studies may be necessary to determine appropriate management techniques, or what known management techniques could be put in place, for protecting each species of concern, and
 - iii. The potential environmental, recreational and economic costs and benefits of alternative beach/dune habitat protection strategies.
- b. Appropriate management techniques for protecting water quality and dune habitats from potential pollutants that might result from motor vehicle fluids or other contaminants that might enter the ODSVRA and ocean through polluted runoff or direct discharges; and
- c. The success of past revegetation efforts within the ODSVRA and the potential need for continuing or expanding those efforts, including expansion of vegetation enclosures.
- d. 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.

If alternative research and management questions and projects are identified as a higher priority than those listed in a through d above, the annual reports shall discuss the basis for such a determination. Annual reports shall be submitted to San Luis Obispo County and California Coastal Commission for informational purposes no later than January 1st of the following year. The first annual report (or portion thereof) shall be completed and submitted to the Commission no later than January 1, 2002.

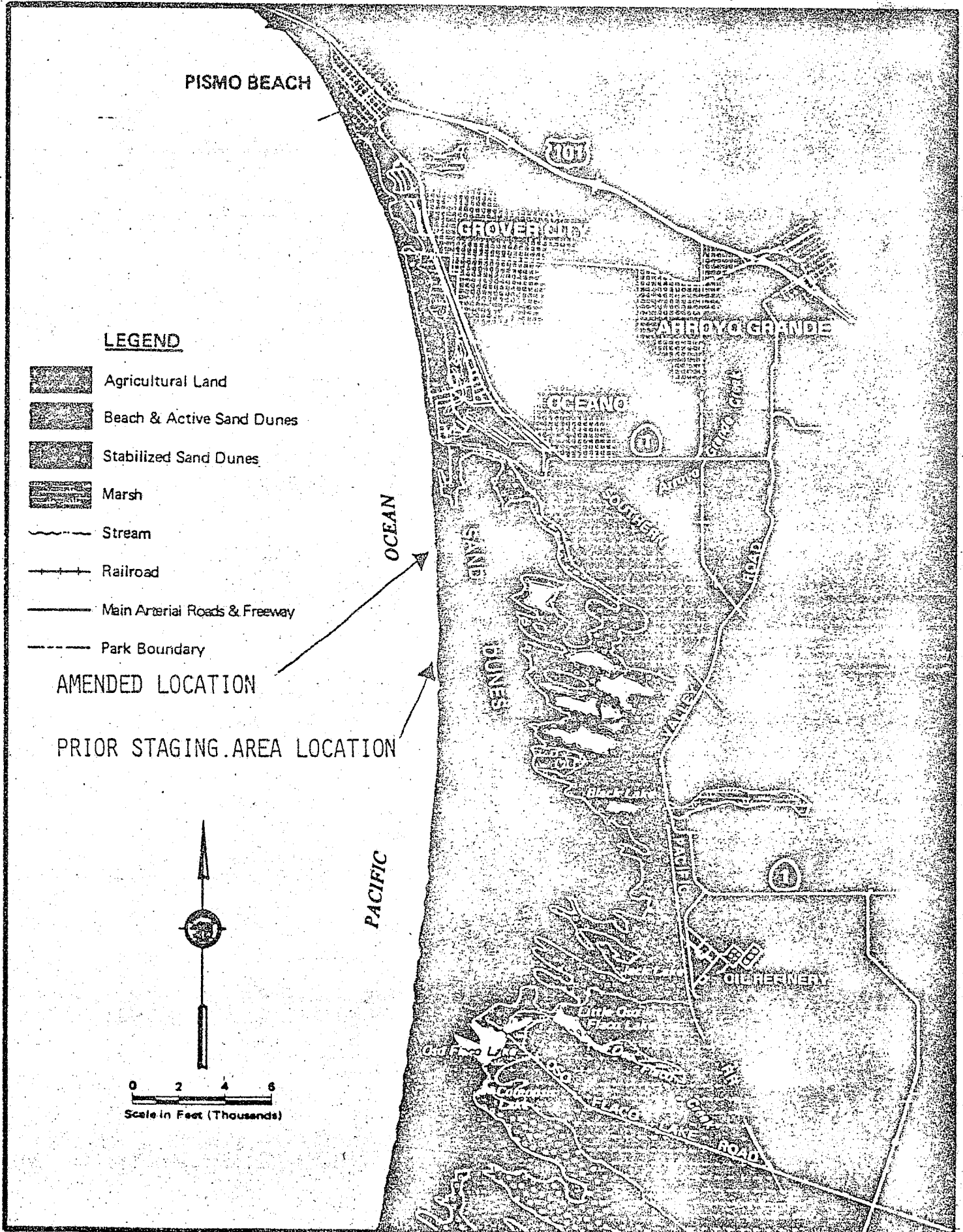
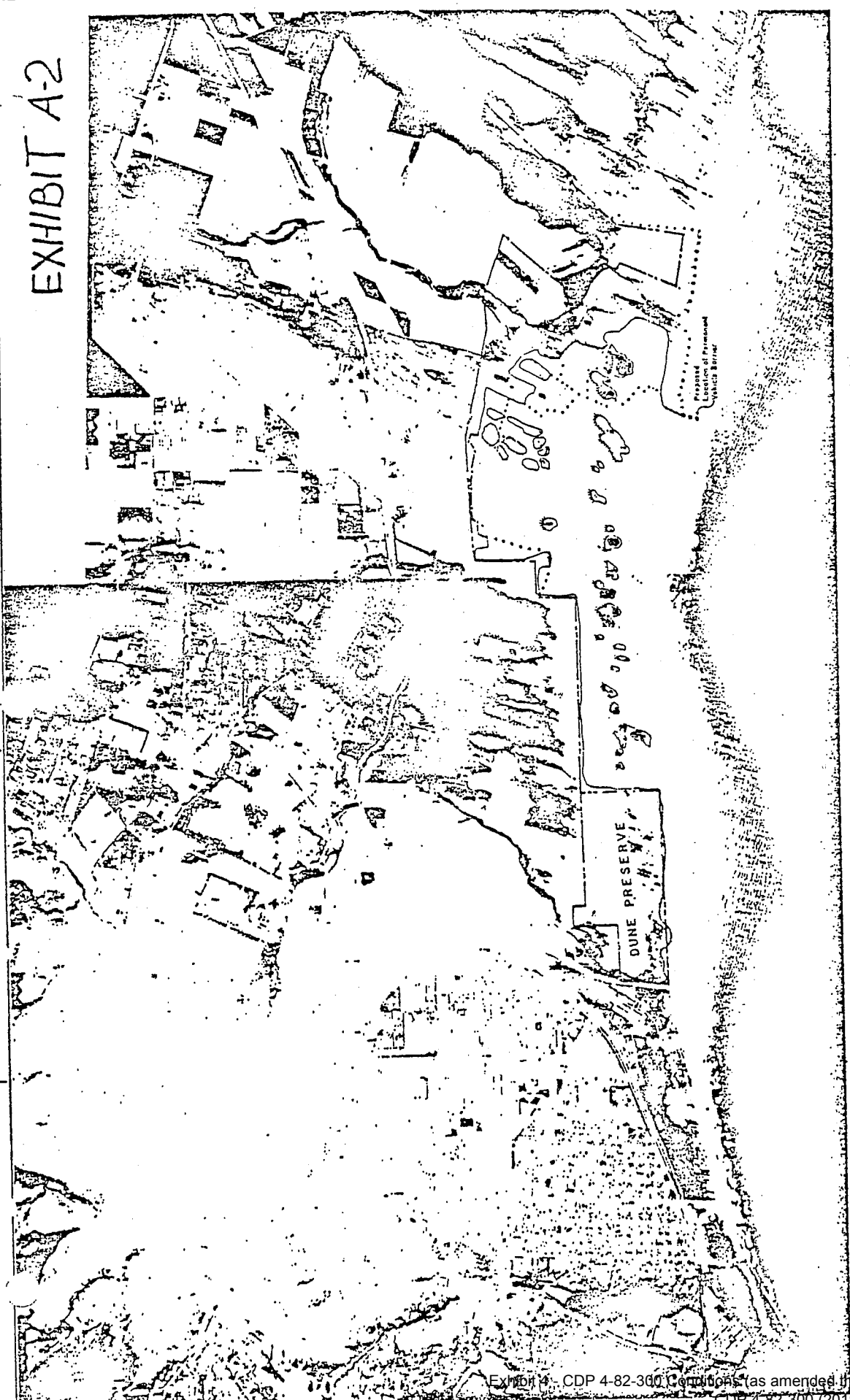


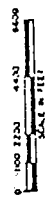
Exhibit 4 - CDP 4-82-300 Conditions (as amended through 4-82-300-A3)

FIGURE 3

EXHIBIT A-2



- LEGEND**
- SVR A BOUNDARY LINE
 - - - EXISTING FENCE TO REMAIN IN PLACE
 - ~ ~ ~ TRAIL OPENINGS TO BE FENCED OFF
 - NEW FENCE TO BE INSTALLED
 - EXISTING FENCE TO BE REMOVED
 - VEGETATION AREA



CALIFORNIA COASTAL COMMISSION

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



April 17, 2007

Mr. Matt Janssen
Coastal Supervising Planner
San Luis Obispo County Department of Planning and Building
County Government Center
San Luis Obispo, CA 93408

Subject: Coastal Commission Staff Response to Your Letter of March 9, 2007, Regarding the County's Proposed Sale of 585 Acres of Oceano Dunes Property to State Parks

Dear Mr. Janssen:

Thank you for contacting me regarding your department's review of the proposal by the San Luis Obispo County Department of General Services to sell approximately 585 acres of property within Oceano Dunes to the State of California. Your letter of March 9, 2007 requests the Commission staff's opinion regarding the relevance of the Figure 4 of the South County Area Plan and Coastal Plan Policies to the General Plan Conformity Report process. In addition, your letter requests our input on how Figure 4 played into the 1982 coastal development permit for the park (CDP 4-82-300) and subsequent amendments. This letter attempts to respond to these requests, as well as to the County staff's stated presumption that Figure 4 is "background information and advisory, but not regulatory or a critical component of the LCP".

1. Figure 4 Background

Use of the Oceano dunes for off-highway vehicle (OHV) recreation, and the need to protect sensitive habitats and adjacent properties from adverse impacts attributable to OHV use, has been a long-standing controversial issue for both the Coastal Commission and San Luis Obispo County, and was discussed in detail during the County's development of its Local Coastal Program (LCP). Based on a review of the LCP and permit history regarding this issue, it is clear that both San Luis Obispo County and the Coastal Commission have had significant concerns regarding the appropriate location for a permanent access route and staging area to serve the OHV riding area. We have also been concerned about managing OHV use, and other forms of recreation, in a manner that is consistent with the resource protection requirements of the Coastal Act.

These concerns were particularly evident during the development and certification of the LCP's Land Use Plan (LUP), which, as originally adopted by the County in October 1981, proposed to close the dunes to vehicle use and camping until a management plan was submitted by State Parks and approved by the County. In response to the issues raised by this proposal, staff from the County, the Coastal Commission, and State Parks worked together with interested parties to evaluate and develop alternative policies that would allow for continued OHV and camping uses, while providing appropriate levels of resource protection. The results of this effort are reflected

by the terms of the Commission's approval of Coastal Development Permit 4-82-300 (which occurred prior to the Commission's adoption of the LUP in 1983) as well as in the certified LUP.

In particular, both CDP 4-82-300 and the LUP consider the existing access route to the OHV riding area (via Grand and Pier Avenues) to be temporary in nature; recognize that OHV and other recreational uses have adverse impacts on the sensitive habitat areas supported by the park; and require further evaluation of alternative access routes and management measures to avoid and minimize these impacts. Specifically, condition 1b of CDP 4-82-300 requires the selection of a permanent staging area within 18 months of LUP certification, and construction of the permanent staging area within 3 years of LUP certification. In the event that the construction and operation of a permanent staging area is not completed within these timeframes (as is currently the case), condition 1b states that the permit shall be subject to review and modification by the County or the Commission. This condition also states that prior to construction, the County LUP and the State Parks General Development Plan shall be amended to include the selected permanent staging area site and additional standards or conditions for its design and operation. Such an amendment has never been proposed.

In light of the above history, it is the 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. At the time that CDP 4-82-300 was approved and the LUP was certified it was recognized that further evaluation of the most appropriate location for the permanent staging area would be needed to implement this objective. The inclusion of Figure 4 within the LUP, along with policies that cross-reference the requirements of CDP 4-82-300, reflect the interim nature of current OHV use patterns and require further consideration of these long-term management options as necessary to carry out the resource protection requirements of the Coastal Act and the certified LCP. 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.

2. Relationship of Figure 4 to CDP 4-82-300 and Associated Permit Amendments

As described above, the Commission's decision to approve CDP 4-82-300 predates the certification of the LUP and associated figures. The Commission's action on this permit recognizes, in the adopted findings, that "The proposed projects recommended for approval herein are central to the resolution of a major Substantial Issue within the submitted San Luis Obispo County Land Use Plan of its Local Coastal Program. They are proposed by State Parks as an initial step in the resolution of that issue."

Following the Commission's action on CDP 4-82-300, the County submitted an LUP that included the figure currently referenced as Figure 4 by the LCP, as well as policies that continued to propose a temporary moratorium on vehicle use and camping. The Commission suggested modification to these policies that were later accepted by the County, which provided

a cross reference to the interim provisions of CDP 4-82-300, and maintained the County's stated desire to establish a natural buffer from the impacts of OHV use on County owned land (e.g., as reflected by Figure 4 and South County Area Plan Policy 9). 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.

Implementation of these LCP and permit conditions has taken place in conjunction with State Parks, using various techniques. Condition Compliance reviews initiated by the Commission in 1994, partly in response to concerns expressed by the County regarding the intensity of recreational use, resulted in a renewed effort to understand the "carrying capacity" of the park unit, and regulate the types and levels of public use accordingly. After failing to reach consensus on how to effectively accomplish this objective, State Parks proposed an amendment to establish a Technical Review Team (TRT), which was approved by the Coastal Commission in 2001 (CDP 4-82-300-A5), and currently functions as the method by which these long-term management issues continue to be discussed.

Although Figure 4 and other LCP policies calling for the establishment of a buffer on County land have not, to the knowledge of Commission staff, been raised in prior amendments and permit reviews, the issues associated with these provisions and described above, continue to be discussed. In fact, at its February 2007 hearing, the Coastal Commission decided to send a letter to the park superintendent that identifies the need to resolve the interim status of the existing riding entrance and staging area, and states that State parks should submit a permit amendment application that, among other things, proposes a permanent location for recreational vehicle access and staging. The provisions of the certified LCP will be applicable to this application, and currently apply to any new development proposed within the area.

3. General Plan Conformity Report and Potential Sale

The County's decision whether to sell the land it owns, as well as its implementation of Government Code Section 65402 (requiring a General Plan conformity report prior to such a sale), are not "development" decisions that are regulated by the Coastal Commission. This decision may, however, affect both the County's and the Coastal Commission's ability to carry out the terms of the certified LCP and CDP 4-82-300 discussed above, and the Commission staff therefore appreciates the opportunity to comment on the proposed sale, and we support the conclusions of the County Planning staff that the sale would result in the continuation of a use that is inconsistent with the land use designations established by the certified LCP.

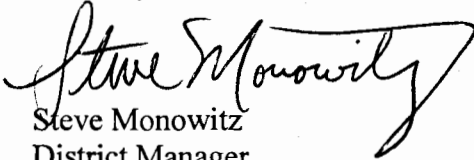
With respect to the proposed sale, the Commission staff is concerned that a transfer of ownership to State Parks, for the stated purpose of continued OHV use, may affect implementation of the long term planning and resource management requirements established by CDP 4-82-300 and the certified LCP. In the past, the OHV enabling legislation has been cited by State Parks as preempting the Commission's ability to regulate the type and level of recreational use within the park unit. As a result, retaining County ownership over these lands will help ensure that LCP

Matt Janssen
Oceano Dunes GP Conformity
April 17, 2007
Page 4

and Coastal Act policies can be applied to future park management decisions that affect these areas.

For these reasons, the Commission staff encourages the County to consider entering into a short-term lease agreement with State Parks rather than selling the land. This will enhance our ability to work with County and State Parks staff on the outstanding long-term park management issues discussed above. Thank you for your consideration of these comments.

Sincerely,


Steve Monowitz
District Manager

RECREATION: The following standards apply only to lands within the Recreation land use category in the rural portions of the planning area.

NOTE: PORTIONS OF THE TEXT ADDRESSING AREAS OUTSIDE THE COASTAL ZONE HAVE BEEN DELETED. (LCP)

Guadalupe Dunes. The following standards apply to the sand dune areas south of Oso Flaco Road (see Figure 2). (LCP)

1. **Access.** Access to the recreation area is not to be across lands designated in the Agriculture land use category. (LCP)
2. **Dune Stabilization.** Development of recreational uses is to include a program for dune stabilization to prevent sand migration into the adjacent farmland of the Oso Flaco Valley. (LCP)
3. **Limitation On Use.** Allowable uses identified in Coastal Table O, Part I of the Land Use Element are limited to the following: fisheries and game preserves; pipelines and power transmission; crop production and grazing; coastal accessways; and water wells and impoundments. No off-road vehicular use is permitted other than for management of the natural areas or to service allowable uses. (LCP)

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

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

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

5. **Access Control.** All access points to the park facility will be controlled. Primary access for off-road vehicles into the dunes will be as indicated in Coastal Development Permit No. 4-82-30A. (LCP)
6. **Noise Control.** Noise control measures shall be required for ORV use in proximity to natural preserve areas. (LCP)

7. **Alternative Camping Areas.** Alternative camping areas subject to the numerical limitations of Coastal Development Permit No. 4-82-30A may be appropriate in the dunes area and beach. These are dependent upon assurance that scattered sites will still allow for adequate environmental protection throughout the dunes. (LCP)

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

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

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

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

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

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

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

9. **ORV Use Area.** ORV use shall be permitted only in identified unfenced vehicular use area. These areas are identified in Figure 4. No recreational ORV use will be allowed in the designated natural areas. These buffer areas reflect areas required for habitat protection and generally recognize the established lease agreement with Union Oil for the areas adjacent to the eastern portion of the park. ORV is prohibited in all vegetated areas. (LCP)



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

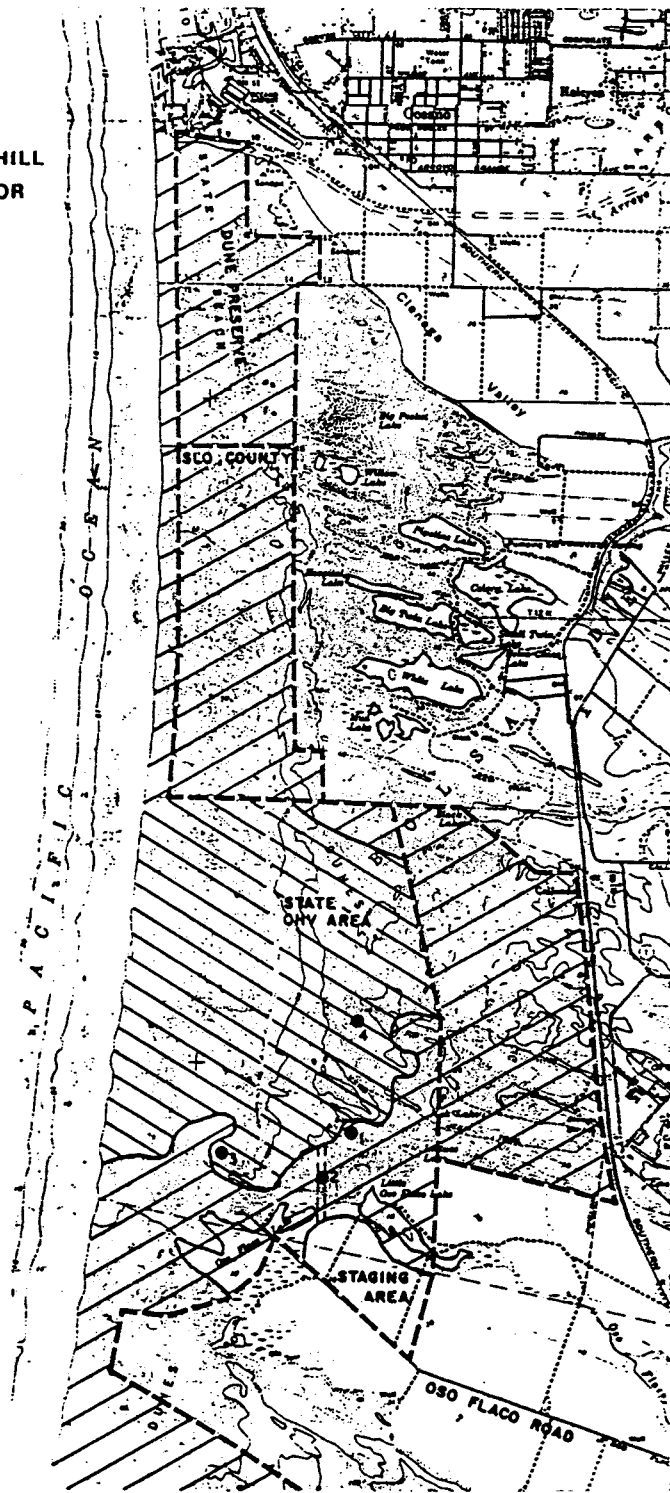
10. **Administration of County Holdings.** The county-owned land south of the dune preserve shall be administered through a memorandum of understanding between the county and the State Department of Parks and Recreation. Management of the facility has been assigned to the State. This shall be reexamined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

FIGURE 4

OFF-ROAD VEHICLE USE AREAS

LEGEND

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



REGULATION X

FUGITIVE DUST EMISSION STANDARDS, LIMITATIONS AND PROHIBITIONS

RULE 1001 Coastal Dunes Dust Control Requirements *(Adopted 11/16/2011)*

- A. **APPLICABILITY**. The provisions of this Rule shall apply to any operator of a coastal dune vehicle activity area, as defined by this Regulation, which is greater than 100 acres in size.
- B. **DEFINITIONS**. For the purpose of this Rule, the following definitions shall apply:
1. “APCD”: The San Luis Obispo County Air Pollution Control District.
 2. “APCO”: The San Luis Obispo County Air Pollution Control Officer.
 3. “Coastal Dune”: means sand and/or gravel deposits within a marine beach system, including, but not limited to, beach berms, fore dunes, dune ridges, back dunes and other sand and/or gravel areas deposited by wave or wind action. Coastal sand dune systems may extend into coastal wetlands.
 4. “Coastal Dune Vehicle Activity Area (CDVAA)”: Any area within 1.5 miles of the mean high tide line where public access to coastal dunes is allowed for vehicle activity.
 5. “CDVAA Monitor”: An APCO-approved monitoring site or sites designed to measure the maximum 24-hour average PM₁₀ concentrations directly downwind from the vehicle riding areas at the CDVAA. At a minimum, the monitoring site shall be equipped with an APCO-approved Federal Equivalent Method (FEM) PM₁₀ monitor capable of measuring hourly PM₁₀ concentrations continuously on a daily basis, and an APCO-approved wind speed and wind direction monitoring system.
 6. “CDVAA Operator”: Any individual, public or private corporation, partnership, association, firm, trust, estate, municipality, or any other legal entity whatsoever which is recognized by law as the subject of rights and duties, who is responsible for the daily management of a CDVAA.
 7. “Control Site Monitor”: An APCO-approved monitoring site or sites designed to measure the maximum 24-hour average PM₁₀ concentrations directly downwind from a coastal dune area comparable to the CDVAA but where vehicle activity has been prohibited. At a minimum, the monitoring site shall be equipped with an APCO-approved Federal Equivalent Method (FEM) PM₁₀ monitor capable of measuring hourly PM₁₀ concentrations continuously on a daily basis, and an APCO-approved wind speed and wind direction monitoring system.

8. “Designated Representative”: The agent for a person, corporation or agency. The designated representative shall be responsible for and have the full authority to implement control measures on behalf of the person, corporation or agency.
9. “Monitoring Site Selection Plan”: A document providing a detailed description of the scientific approach, technical methods, criteria and timeline proposed to identify, evaluate and select appropriate locations for siting the temporary and long-term CDVAA and control site monitors.
10. “Paved Roads”: An improved street, highway, alley or public way that is covered by concrete, asphaltic concrete, or asphalt.
11. “PM₁₀”: Particulate matter with an aerodynamic diameter smaller than or equal to a nominal 10 microns as measured by the applicable State and Federal reference test methods.
12. “PMRP”: Particulate Matter Reduction Plan.
13. “PMRP Monitoring Program”: The APCO approved monitoring program contained in the PMRP that includes a detailed description of the monitoring locations; sampling methods and equipment; operational and maintenance policies and procedures; data handling, storage and retrieval methods; quality control and quality assurance procedures; and related information needed to define how the CDVAA and Control Site Monitors will be sited, operated and maintained to determine compliance with section C.3.
14. “Temporary Baseline Monitoring Program”: A temporary monitoring program designed to determine baseline PM10 concentrations at the APCO-approved CDVAA and Control Site Monitor locations prior to implementation of the PMRP emission reduction strategies and monitoring program. The program shall include a detailed description of the monitoring locations; sampling methods and equipment; operational and maintenance policies and procedures; data handling, storage and retrieval methods; quality control and quality assurance procedures; and related information needed to define how the temporary monitors will be sited, operated and maintained to provide the required baseline data. The temporary monitors shall meet the specifications of the CDVAA and Control Site Monitors unless otherwise specified by the APCO.
15. “Track-Out”: Sand or soil that adhere to and/or agglomerate on the exterior surfaces of motor vehicles and/or equipment (including tires) that may then fall onto any highway or street as described in California Vehicle Code Section 23113 and California Water Code 13304.
16. “Track-Out Prevention Device”: A gravel pad, grizzly, rumble strip, wheel wash system, or a paved area, located at the point of intersection of an unpaved area and a paved road that is designed to prevent or control track-out.
17. “Vehicle”: Any self-propelled conveyance, including, but not limited to, off-road or all-terrain equipment, trucks, cars, motorcycles, motorbikes, or motor buggies.

18. “24-Hour Average PM₁₀ Concentration”: The value obtained by adding the hourly PM₁₀ concentrations measured during a calendar 24-hour period from midnight to midnight, and dividing by 24.

C. GENERAL REQUIREMENTS

1. The CDVAA operator shall develop and implement an APCO-approved Temporary Baseline Monitoring Program to determine existing PM₁₀ concentrations at the APCO-approved CDVAA and Control Site Monitor locations prior to implementation of the PMRP emission reduction strategies and monitoring program.
2. The operator of a CDVAA shall prepare and implement an APCO-approved Particulate Matter Reduction Plan (PMRP) to minimize PM₁₀ emissions for the area under the control of a CDVAA operator. The PMRP shall contain measures that meet the performance requirements in C.3 and include:
 - a. An APCO-approved PM₁₀ monitoring network containing at least one CDVAA Monitor and at least one Control Site Monitor.
 - b. A description of all PM₁₀ control measures that will be implemented to reduce PM₁₀ emissions to comply with this rule, including the expected emission reduction effectiveness and implementation timeline for each measure.
 - c. A Track-Out Prevention Program that does not allow track-out of sand to extend 25 feet or more in length onto paved public roads and that requires track-out to be removed from pavement according to an APCO-approved method and schedule.
3. The CDVAA operator shall ensure that if the 24-hr average PM₁₀ concentration at the CDVAA Monitor is more than 20% above the 24-hr average PM₁₀ concentration at the Control Site Monitor, the 24-hr average PM₁₀ concentration at the CDVAA Monitor shall not exceed 55 ug/m³.
4. The CDVAA operator shall ensure they obtain all required permits from the appropriate land-use agencies and other affected governmental agencies, and that the requirements of the California Environmental Quality Act (CEQA) and the National Environmental Quality Act (NEPA) are satisfied to the extent any proposed measures identified in the PMRP or Temporary Baseline Monitoring Program require environmental review.
5. All facilities subject to this rule shall obtain a Permit to Operate from the Air Pollution Control District by the time specified in the Compliance Schedule.

D. Exemptions

1. Section C.3 shall not apply during days that have been declared an exceptional event by the APCO and where the United States Environmental Protection Agency has not denied the exceptional event.

Civil Case No.
CV120013
Consent
Decree found
invalid
requirement
C5 only.

E. RECORDKEEPING REQUIREMENTS: The CDVAA operator subject to the requirements of this Rule shall compile and retain records as required in the APCO approved PMRP. Records shall be maintained and be readily accessible for two years after the date of each entry and shall be provided to the APCD upon request.

F. COMPLIANCE SCHEDULE:

1. The CDVAA operator shall comply with the following compliance schedule:
 - a. By February 28, 2012, submit a draft Monitoring Site Selection Plan for APCO approval.
 - b. By May 31, 2012, submit a draft PMRP for APCO review.
 - c. By November 30, 2012, submit complete applications to the appropriate agencies for all PMRP projects that require regulatory approval.
 - d. By February 28, 2013, obtain APCO approval for a Temporary CDVAA and Control Site Baseline Monitoring Program and begin baseline monitoring.
 - e. By May 31, 2013, complete all environmental review requirements and obtain land use agency approval of all proposed PMRP projects.
 - f. By July 31, 2013, obtain APCO approval of the PMRP, begin implementation of the PMRP Monitoring Program, and apply for a Permit to Operate.
 - g. By May 31, 2015, the requirements of Section C.3 shall apply.
2. With the exception of section F.1.g, the CDVAA operator will not be subject to civil penalties for failure to meet any timeframe set forth in section F.1 caused solely by delays from regulatory or other oversight agencies required to consider and approve the operator's PMRP or any part thereof.



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Ventura Fish and Wildlife Office
2493 Portola Road, Suite B
Ventura, California 93003



IN REPLY REFER TO:
08EVEN00-2017-CPA-0023

December 22, 2016

Brent Marshall, District Superintendent
California Department of Parks and Recreation
Oceano Dunes State Vehicular Recreation Area
340 James Way, Suite 270
Pismo Beach, California 93449

Subject: Oceano Dunes State Vehicular Recreation Area, Second Notice of Additional
Endangered Species Act Violations

Dear Mr. Marshall:

This letter is in response to reports made by the Oceano Dunes State Vehicular Recreation Area (SVRA), that an additional three federally threatened western snowy plovers (*Charadrius nivosus nivosus*) were found dead in vehicle tracks on two separate instances during the month of November 2016 (California Department of Fish and Wildlife 2016; R. Glick, California State Department of Parks and Recreation (State Parks) in litt. 2016a, 2016b). On March 29, 2016, we issued a similar letter expressing our concerns regarding three western snowy plovers that had been killed by vehicle collisions within a 30-day period earlier this year (U.S. Fish and Wildlife Service (Service) 2016). In the March 29 letter, we requested a site visit and made recommendations on measures the SVRA should take to avoid impacts to federally listed species.

The Service's responsibilities include administering the Endangered Species Act of 1973, as amended (Act), including sections 7, 9, and 10. Section 9 of the Act and its implementing regulations prohibit the take of listed wildlife species without special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. Harassment is defined by the Service as an intentional or negligent action that creates the likelihood of injury to listed species by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. Harm is further defined by the Service to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). Exemptions to the prohibitions against take may be obtained through coordination with the Service in two ways: through interagency consultations for projects with Federal involvement pursuant to section 7 of the Act or through the issuance of an incidental take permit under section 10(a)(1)(B) of the Act.

We reiterate that State Parks has had no authorization or permit to incidentally take federally-protected species at Oceano Dunes SVRA. State Parks has been working with our office to develop a habitat conservation plan (HCP) as part of an application for an incidental take permit, while implementing measures intended to avoid impacting federally-listed species; particularly, the western snowy plover and the federally endangered California least tern (*Sterna antillarum browni*). In our March 29, letter, we discussed the following items:

1. A site visit be scheduled with Ventura Fish and Wildlife Office staff and staff of the Service's Office of Law Enforcement to discuss how State Parks intends to come into compliance with the Act.
2. The need to complete the HCP process as quickly as possible.
3. Necessary review and enhancement of avoidance and minimization measures to ensure take is avoided until State Parks obtains incidental take authorization under the Act.
 - a. Options include reduced speed limits, additional beach closures, and additional enforcement of existing speed limits.
4. State Parks should not schedule any special events that could increase risk of take of federally protected species.

On June 30, 2016, Ventura Fish and Wildlife Office and Office of Law Enforcement Staff met with State Parks at the Oceano Dunes SVRA to discuss the recent violations of the Act and steps to move forward. Since then, progress on the HCP has been made and regular coordination meetings are now occurring; however, as evidenced by the recent additional mortalities, the avoidance and minimization measures being implemented have not been adequate to avoid take, and thus violations of the section 9 take prohibitions of the Act continue to occur.

We request within 30 days of the date of this letter, State Parks demonstrate what avoidance and minimization measures were in place to prevent take in November 2016, and what measures it will now impose in light of the additional violations of the Act that have occurred subsequent to our March 29 letter and discussions. State Parks must demonstrate how they will ensure that any new measures identified above are implemented to avoid further violations of the Act.

The HCP has been progressing, but not quickly enough to provide State Parks with coverage for these incidences of take; thus, in your correspondence, State Parks should include the updated schedule for completion of the HCP package and application. The correspondence should further describe if the Service's prior recommendations outlined above have been adopted and/or include explanations if they have not. In addition, the correspondence should provide reports on any special events that have been held in the SVRA since the March 29 letter. In addition to the measures recommended in our March 29 letter, we recommend State Parks increase monitoring and decrease the number of recreational vehicles in the SVRA.

Please note that violations of the Act may result in civil or criminal penalties, the assessment of which could preclude the ability of State Parks to obtain an incidental take permit in the future. Should State Parks fail to respond to this letter, and take of listed species continues to occur at

Oceano Dunes SVRA, the Service may seek all appropriate legal remedies, which may include criminal or civil penalty action or civil injunctive relief. See, for example, *United States v. Town of Plymouth, Mass.*, 6 F. Supp. 2d 81 (D. Mass. 1998), where the Service sought and achieved a preliminary injunction banning off road vehicles from a beach because of take of the federally threatened piping plover (*Charadrius melodus*). In addition to Federal enforcement, unauthorized take of listed species is subject to third party litigation.

We also urge you to contact the Service to discuss remediation of the take that has occurred to date. If you have any questions, please contact Lena Chang of my staff at (805) 644-1766, extension 302, or by electronic mail at lena_chang@fws.gov.

Sincerely,



Stephen P. Henry
Field Supervisor

REFERENCES CITED

California Department of Fish and Wildlife. 2016. CDFW seabird necropsy report regarding cause of death for western snowy plover collected on November 1, 2016. California Department of Fish and Wildlife Office of Spill Prevention and Response Marine Wildlife Veterinary Care and Research Center, Santa Cruz, California. Dated November 15, 2016.

[D. Mass] United States District Court, D. Massachusetts. 1998. 6 F. Supp. 2d 81 (1998) UNITED STATES of America, Plaintiff, v. TOWN OF PLYMOUTH, MASSACHUSETTS, Defendant. Available on the internet at <No. CIV. A. 98-10566-PBS. <http://law.justia.com/cases/federal/district-courts/FSupp2/6/81/2347923/>>. May 15, 1998.

[Service] United States Fish and Wildlife Service. 2016. Letter to Oceano Dunes State Vehicular Recreation Area regarding Endangered Species Act violations and habitat conservation plan (2016-CPA-0086). Ventura Fish and Wildlife Office, Ventura, California. Dated March 29, 2016.

In litteris

Glick, Ronnie. 2016a. Senior Environmental Scientist, California Department of Parks and Recreation, Oceano Dunes District. Electronic mail to Roger Root, Deputy Field Supervisor, Ventura Fish and Wildlife Office, and Laura Chee, Special Agent, Office of Law Enforcement, including final necropsy report for western snowy plover found at Oceano Dunes on November 1, 2016. Dated November 15, 2016.

Glick, Ronnie. 2016b. Senior Environmental Scientist, California Department of Parks and Recreation, Oceano Dunes District. Electronic mail to Roger Root, Deputy Field Supervisor, Ventura Fish and Wildlife Office, and Laura Chee, Special Agent, Office of Law Enforcement, regarding two western snowy plovers found dead in vehicle track at Oceano Dunes on November 30, 2016. Dated November 30, 2016.

From: [Brittany Struck - NOAA Federal](#)
To: [Glick, Ronnie@Parks](mailto:Glick.Ronnie@Parks)
Subject: coordination and information exchange with NOAA Fisheries
Date: Friday, December 16, 2016 1:43:29 PM

Hi Ronnie,

I'm reaching out to you for a few reasons that I'll explain below. Perhaps, if you are in the office next week we can coordinate a time for a quick chat or follow up from my email. Quickest way to reach me is my cell: 214 505 9547.

First, in the spirit of coordination and communication, I wanted to let State Parks know that we issued a draft jeopardy/adverse modification biological opinion under the ESA Section 7(a)(2) to the Corps of Engineers for a pending permit request by the County of San Luis Obispo for sediment and vegetation removal throughout the lower 3-miles of Arroyo Grande Creek. We are currently in discussions right now with the Corps and the County to formulate a reasonable and prudent alternative to the currently proposed flood-control project. As a side note, within our draft biological opinion we anticipate sediment effects to the lagoon itself from flood-control maintenance activities.

Second, also within our draft biological opinion, we bring attention to the County's interim sandbar management plan (2013), and I was curious if the County has coordinated with State Parks on this plan (attached) given the vehicle recreation area that crosses over Arroyo Grande Creek and its lagoon system?

Lastly, we are aware that the Coastal Commission will be reviewing permits/plans in early January associated with the vehicle recreation area in and around the Arroyo Grande Creek and its lagoon. Our admin record shows we provided technical assistance to State Parks back in 2008, and I would like to revisit and discuss with you the possibility of incorporating some seasonally-specific minimization measures for vehicles crossing this area, particularly during the winter and spring, when we likely see more hydrologic connectivity between the ocean and lagoon. Also, from some recent lagoon surveys, we are seeing evidence of steelhead redds/spawning habitat which deviates from the usual life-history tactics of the species.

Let me know when we can chat and if you are open to receiving seasonally-specific protective minimization measures from us with regard to the vehicle recreation area program.

Thanks,
Brittany

--

Brittany Struck
Natural Resource Management Specialist

*U.S. Department of Commerce
NOAA Fisheries West Coast Region
501 West Ocean Blvd., Suite 4200
Long Beach, CA 90802*

*Office: 562-432-3905
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Cell: 214-505-9547
brittany.struck@noaa.gov



*"Coming together is a beginning;
keeping together is progress;
working together is success."
- Henry Ford*

--

Brittany Struck
Natural Resource Management Specialist

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working together is success."
- Henry Ford*



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Ventura Fish and Wildlife Office
2493 Portola Road, Suite B
Ventura, California 93003



IN REPLY REFER TO:
08EVEN00-2016-CPA-0086

March 29, 2016

Brent Marshall, District Superintendent
California Department of Parks and Recreation
Oceano Dunes State Vehicular Recreation Area
340 James Way, Suite 270
Pismo Beach, California 93449

Subject: Oceano Dunes State Vehicular Recreation Area Endangered Species Act Violations
and Habitat Conservation Plan

Dear Mr. Marshall,

This letter is in response to the three federally threatened western snowy plovers (*Charadrius nivosus nivosus*) that were recently killed by vehicle collisions within a 30-day period at Oceano Dunes State Vehicular Recreation Area (SVRA). As you are aware, California State Department of Parks and Recreation (State Parks) has had no authorization or permit to incidentally take federally-protected species at Oceano Dunes SVRA since 2001 when the Army Corps of Engineers relinquished jurisdiction over the maintenance of the sand ramps within the SVRA. Since that time, 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 Service's responsibilities include administering the Endangered Species Act of 1973, as amended (Act), including sections 7, 9, and 10. Section 9 of the Act and its implementing regulations prohibit the take of listed wildlife species without special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. Harassment is defined by the Service as an intentional or negligent action that creates the likelihood of injury to listed species by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. Harm is further defined by the Service to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). Exemptions to the prohibitions against take may be obtained through coordination with the

Service in two ways: through interagency consultations for projects with Federal involvement pursuant to section 7 of the Act or through the issuance of an incidental take permit under section 10(a)(1)(B) of the Act.

In 2013, after a period of little progress, State Parks made a renewed commitment to completing the HCP and established a schedule whereby two draft chapters (of the anticipated eight-chapter HCP) would be submitted to the Service for review every 2 months, with a complete draft anticipated by the end of 2015. However, progress stalled in 2014 after four draft chapters were submitted. We understand State Parks has been occupied by issues at the SVRA other than endangered species compliance, and that you had issues with consultant contracting, but we have to emphasize that violations cannot continue.

I request that a site visit be scheduled with my staff and staff of the Service's Office of Law Enforcement as soon as possible to discuss how State Parks intends to come into compliance with the ESA. In addition to the obvious need to complete the HCP process as quickly as possible, avoidance and minimization measures need to be reviewed and enhanced to ensure take is avoided until State Parks obtains incidental take authorization under the Act. Options include reduced speed limits, additional beach closures, and additional enforcement of existing speed limits. In addition, State Parks should not schedule any special events that could increase risk of take of federally protected species.

If you have any questions regarding this letter, please contact Bill Standley of my staff at (805) 644-1766, extension 315, or by e-mail at Bill_Standley@fws.gov.

Sincerely,



Stephen P. Henry
Field Supervisor

cc:
Laura Chee, USFWS Special Agent
Julie Vance, California Department of Fish and Wildlife



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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EDMUND G. BROWN, JR., Governor
CHARLTON H. BONHAM, Director



March 3, 2016

Brent Marshall, District Superintendent
Oceano Dunes District
California Department of Parks and Recreation
340 James Way, Suite 270
Pismo Beach, California 93449

Subject: **2016 Nesting Plan for California Least Tern at Oceano Dunes SVRA**

Dear Mr. Marshall:

The California Department of Fish and Wildlife (CDFW) has reviewed the 2016 Nesting Plan for Least Terns (2016 Plan) at Oceano Dunes State Vehicular Recreation Area (ODSVRA). The 2016 Plan was prepared by your staff at the California Department of Parks and Recreation (DPR) to address take of California least terns (CLT) at ODSVRA. As discussed in our prior letters over the past 15 years, CLT is listed as “Fully Protected” under Fish & Game Code (FGC) §3511 and as Endangered under both the California Endangered Species Act (CESA) and Federal Endangered Species Act (FESA). The fully protected statute specifically prohibits the Department from authorizing any “take” except for authorized scientific research. “Take”, is defined by FGC §86 as “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill”.

It should be noted the Memorandum of Understanding (MOU) between CDFW and DPR allows for “take” of CLT as part of the population monitoring program. However, the “take” authorization in the MOU is very specific and only covers capturing, banding, and monitoring CLT to determine fledging and survival rates (e.g. authorized scientific research). The MOU does not and cannot authorize any take associated projects, including but not limited to Off Highway Vehicle (OHV) use, park operations, or fence construction/maintenance. In 2015, we noted that an unfledged CLT was captured by DPR staff in an open riding area and moved back into the primary CLT enclosure. Even though this “take” was much more desirable than the tern being killed by a vehicle, it was not covered under nor authorized by the MOU.

Over the past fifteen years, there have been 10 documented incidents of take of CLT which resulted in mortalities. Over this period, CDFW has worked with DPR to increase protective measures (increasing nest buffer size, determining night roost locations, fence modifications) so further take can be avoided. However, the proposed 2016 Plan reduces previous protections for CLT at ODSVRA or makes prior practices optional (see specifics below).

CDFW provided guidance letters to DPR in 2002, 2004, 2006, and 2015 regarding measures necessary to avoid take of CLT. Two specific measures were included in our prior written guidance; maintaining a minimum 300 meter buffer around the main CLT colony, which was located in the "Boneyard" area at the time, and lining the top fencing wire with plastic tubing so the fence would be more visible to flushing CLT. This latter measure was recommended and implemented specifically to minimize and avoid the CLT injuries and mortalities that occurred in 2014 which were attributed to CLT striking the fence.

The 2016 Plan proposes to modify prior agreements or previously employed minimization and avoidance procedures. First, the 2016 Plan does not address the movement of the main CLT colony to the north where the 300 meter buffer is no longer maintained. The 2016 plan contends this buffer was not supported by scientific literature. Secondly, the 2016 plan proposes to utilize another method for making the top wire visible to CLT in an undefined "experimental area".

CDFW staff have reviewed the literature and recommendations regarding flushing distances and appropriate buffers around least tern nests and colonies. The recommended buffers for nesting sites and unfledged chicks ranged from a minimum of 100 meters in North Carolina (Erwin 1989, National Park Service 2015), to 154 meters in Florida (Rogers and Smith 1995), to 400 meters around nesting colonies in the interior United States (USFWS 2016). Given that "no take" is authorized for CLT and that "take" has occurred over the past 15 years, CDFW recommends a minimum 100 meter buffer be established around all CLT nests in accordance with the minimum distances described above. This distance will need to be increased if any take occurs. It should be noted that the unfledged chick that was captured in the riding area in 2015 had moved beyond the buffer fence approximately 150 meters away from its original nest prior to its capture.

CDFW also recommends some sort of marker be installed on all fencing within 100 meters of a nesting CLT. CDFW is open to working with DPR to develop the most effective and pragmatic marking system for the fences. The deployment of several different types of markers should be investigated.

In our 2004 letter, we recommended the night roost locations for CLT be identified and protected. This item is relevant since two of the CLT mortalities in 2003 were believed to have occurred at night. We have noticed the night roosts have been included in the DPR annual nesting reports and have been routinely recorded along the northern boundary of "Exclosure 6," adjacent to the open riding area. However, the 2016 Plan (or any prior plans) does not include any protective measures to be employed in the event CLT are found night roosting in open riding areas. CDFW recommends biological monitors be present every evening to ensure CLT are not night roosting in an area where they would be subject to take. CDFW also recommends DPR develop procedures to protect night roosting CLT in the event they are roosting outside an enclosure.

Both surf thistle (*Cirsium rhothophilum*) and beach spectaclepod (*Dithyrea maritima*) are listed as threatened under CESA. We encourage DPR to conduct the proposed surveys for these species and support the protective measures described in the 2016 Plan that provide for the protection of nesting CLT and western snowy plover. However, please note that take authorization pursuant to FGC Section 2081(b) (e.g. Incidental Take Permit) would be required prior to any take of either of these listed plant species.

CDFW believes that implementation of the measures described in the 2016 Plan, coupled with the measures proposed in this letter, will result in take of CLT at ODSVRA being unlikely. We look forward to working with you on developing the measures to protect night roosting CLT and for enhancing the visibility of fences. If you have any questions regarding this letter, please contact Bob Stafford, Senior Environmental Scientist (Specialist), by phone at (805) 528-8670 or via email at bob.stafford@wildlife.ca.gov.

Sincerely,



Julie A. Vance
Regional Manager

cc: Bill Henry, Jeff Phillips, Bill Standley
USFWS
2493 Portola Road # B
Ventura, California 93003

Justin Behr, Dan Carl
California Coastal Commission
725 Front Street #300
Santa Cruz, California 95060

ec: K. Hunting, S. Morey, J. Vance, T. Palmisano, R. Thompson, B. Stafford
California Department of Fish and Wildlife

Literature Cited

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EDMUND G. BROWN, JR., Governor
CHARLTON H. BONHAM, Director



July 3, 2015

Brent Marshall, District Superintendent
Oceano Dunes District
California Department of Parks and Recreation
340 James Way, Suite 270
Pismo Beach, California 93449

Subject: Management of California Least Tern at Oceano Dunes SVRA

Dear Mr. Marshall:

This letter is to summarize recent discussions between California Department of Fish and Wildlife (CDFW) Central Region staff and you and your staff at California Department of Parks and Recreation (DPR) regarding mortalities of California least terns (CLT) at Oceano Dunes State Vehicular Recreation Area (ODSVRA) during 2014. It is also to advise you that ODSVRA is at risk of violating the California Endangered Species Act, as well as Fish and Game Code Section 3511 regarding Fully Protected Birds.

As you are aware, CLT is listed as Endangered under both the California Endangered Species Act (CESA) and Federal Endangered Species Act (FESA). In addition, CLT is legislatively designated as “Fully Protected” pursuant to Fish and Game Code §3511, and “take” of the species is prohibited except for authorized scientific research. “Take”, is defined by Fish and Game Code §86 as “... hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill”. DPR does not currently have authority to “take” CLT at ODSVRA, except for those specific activities authorized by way of your current Scientific Collecting Permit and letter Memorandum of Understanding (MOU). The CLT’s listing as Fully Protected precludes CDFW from extending incidental take authorization for that species.

Over 15 years ago, ODSVRA had federal take authority for several species including CLT pursuant to Section 7 of FESA by way of consultation between the United States Fish and Wildlife Service (USFWS) and the United States Army Corps of Engineers (ACOE). However, ACOE no longer permits activities at ODSVRA so there is currently no nexus for federal consultation, and therefore no federal incidental take authorization is in place for ODSVRA at this time.

Each year, your staff provides a “Nesting Season Management Plan to Avoid Take of the California Least Tern and Western Snowy Plover at Oceano Dunes State Vehicular Recreation Area” to CDFW and the USFWS, who has responsibility for administering the provisions of FESA regarding the two shorebird species. In the Nesting Season Management Plan each year, ODSVRA states that “...DPR believes 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...”¹

Each year, the Nesting Season Management Plan identifies a number of measures and protocols DPR will put in place in order to avoid take of both western snowy plover and CLT. Those measures and protocols are based on measures and protocols specified in a prior USFWS Biological Opinion (BO) (1-8-95-F/C-17), which is no longer in effect; a CDFW letter regarding avoidance of take of CLT, dated May 8, 2001; and additional measures added in 2002 (letter May 6, 2002), 2003 (2003 Nesting Season Conservation Management Plan, March, 2003) and 2006 (2006 Nesting Season Management Plan, October, 2006). The CDFW letters and changes made subsequently in the 2003 and 2006 plans are incorporated by reference into each year's Nesting Season Management Plan. Specific provisions of the referenced documents and letters include the following measures and protocols:

1. All measures of the federal BO 1-8-95-F/C-17 to protect terns are to be implemented (regardless of whether the BO remains in effect), except that in the event there are more protective measures described in the May 6, 2002 letter, the more protective will be implemented.
2. The main least tern colony south of post 8 shall be fenced with a 300 meter (~1,000 foot) buffer from the perimeter of the colony. In Nesting Season Management Plans, as recommended by the Scientific Subcommittee, “bumpouts” are to be constructed for nests found within 100 feet of the fence after nesting had been initiated.
3. Single nests shall be enclosed including at least a 25 meter (~75 foot) buffer. In the event that chicks are observed outside an enclosure, the enclosure will be doubled to provide a 50-meter (~150 foot) buffer. If chicks travel outside of the expanded area, then a new fence will be installed to provide a 100 meter (~300 foot) buffer. Doubling of the setback distance will continue in this fashion if chicks are observed leaving the enclosure.
4. Biological monitors shall be supplied a copy of the letter(s) for ready reference in the field.
5. If a California least tern is killed or injured, or any California least tern is found dead or injured, DPR will notify CDFW and USFWS within 30 minutes of the event. Dead or injured animals will be turned over to CDFW or USFWS. A written report detailing the date, time, location, and general circumstances under which the dead or injured animal was found will be submitted to CDFW and USFWS no later than three (3) business days following the incident.

As stated in the 2002 letter from CDFW, and incorporated by reference into each year's Nesting Season Management Plan, “DFG [CDFW] believes the implementation of the measures identified in this letter will be sufficient to avoid mortality or injury to least terns at ODSVRA”, and by review and approval of the Plan each year, CDFW reaffirms our confidence in the measures to avoid take of California least tern.

¹To date, the Department has not received the 2015 Nesting Season Plan.

Brent Marshall, District Superintendent
Oceano Dunes District
California Department of Parks and Recreation
July 3, 2015
Page 3

According to emails and meetings with your staff, there were seven documented deaths of least tern at ODSVRA in 2014. None of these was reported to CDFW in a timely manner as required by the guidance that the SVRA has been operating under, either within the 30-minute initial response window, or within the 3-business-day written report window.

On March 19, 2015, you, Ronnie Glick and Joanna Iwanicha met with Bob Stafford, Deborah Hillyard and Julie Vance of CDFW Central Region staff to discuss the least tern mortalities, the approach to addressing CLT protections in 2015, and to ensure compliance with the measures and protocols which supported CDFW's confidence that DPR activities would not result in take of California least tern at ODSVRA. Prior to the meeting, Mr. Stafford had suggested your staff provide specific information for the meeting, including a map of the birds found dead and injured; information about the dead/injured terns; and a map of the previous years' main tern nesting colony with a 300 meter/1,000 foot buffer drawn around the colony. At the meeting, there was a discussion regarding the 2014 CLT injuries/deaths and the reliance of CDFW on the requirements of the various Nesting Season Management Plans to assure ourselves and our constituents that no take of tern would occur.

Also discussed was the need for installation of an additional portion of fencing to comply with the requirement that the main nesting colony be fenced with a 1,000 foot buffer; and that the fence would be in addition to the fence which had already been installed for western snowy plover for the 2015 plover nesting season. DPR and CDFW agreed that the additional fencing to buffer the least tern main nesting colony should be installed prior to May 1 when least terns typically return to the area and that the location of the fence could be adjusted to address public safety as required by topography or other physical features. It was also agreed that DPR staff would flag the location of the 1,000 foot buffer from the main nesting colony, and CDFW would return on April 1 to review the location of the buffer, and discuss proposed modifications based on geography and public safety issues. At that meeting, CDFW requested that appropriate staff from USFWS be invited to the April 1 field meeting.

Bob Stafford and Deborah Hillyard met on April 1, 2015, with you, Ronnie Glick, Amber Clark and Joanna Iwanicha to review the 1,000 foot buffer as flagged in the field. USFWS was not in attendance, and had apparently not been invited to the field meeting. The discussion addressed modifications to the 1,000 foot buffer based on topography and some operational needs; and CDFW approved a final location for the 2015 fence at the end of the field meeting. CDFW left the meeting with the understanding that the fencing would be installed prior to May 1 in order to have it completed prior to the arrival and initiation of nesting of CLT this season.

On May 14, 2015, (approximately two weeks after the fence was to have been installed), you emailed former Regional Manager Jeff Single to advise him that "... we are unable to implement this additional closure during the 2015 nesting season" with no explanation as to why the fence, a required measure of every Nesting Season Management Plan since 2003, was not constructed. The various measures and protocols in the annual Nesting Season Management Plans have been relied upon by both DPR and CDFW to assure no incidental take of CLT would occur. The only authorized take of CLT is associated with the banding and population assessment as authorized by way of your Scientific Collecting Permit, MOU, and federal recovery permit. CDFW still believes that implementation of the measures identified in the BO, letters and subsequent Nesting Season Management Plans are sufficient to avoid mortality or

Brent Marshall, District Superintendent
Oceano Dunes District
California Department of Parks and Recreation
July 3, 2015
Page 4

injury to least terns at ODSVRA. However, there is no Nesting Season Management Plan in place for 2015, and some key provisions of previous seasons' plans have not been implemented. DPR's failure to comply with the agreed upon measures and protocols leaves DPR vulnerable to a violation of both Fish and Game Code 3511 and CESA, which could lead to an enforcement action.

We recommend that you submit the 2015 Nesting Season Management Plan as soon as possible for review and approval by CDFW and USFWS. Additionally, we recommend you review your current practices to ensure that you have implemented the measures identified in the plan (which we assume to be the same as those from the previous 12 years' Nesting Season Management Plans unless specified and approved by CDFW and USFWS), including but not limited to items 1 through 5 above. In the interim, with no Nesting Season Management Plan submitted, approved or implemented, DPR risks a violation of both CESA and Fish and Game Code 3511. If you have any questions regarding this letter, please feel free to contact Bob Stafford, Senior Environmental Scientist (Specialist), by phone at (805) 528-8670 or via email at bob.stafford@wildlife.ca.gov.

Sincerely,



Terry Palmisano
Acting Regional Manager
Central Region

cc: Bill Henry, Jeff Phillips, Bill Standley
United States Fish and Wildlife Service
Ventura Office
2493 Portola Road, Suite B
Ventura, California 93003

Justin Buhr, Dan Carl
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ec: Hunting, Morey, Palmisano, Vance, Hillyard, Stafford



**DEPARTMENT OF FISH AND GAME
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(707) 944-5500



March 18, 2004

Mr. Andy Zilke, Acting District Superintendent
Oceano Dunes District
Department of Parks and Recreation
576 Camino Mercado
Arroyo Grande, CA 93420-1816

Re: Protective measures to avoid incidental take of California least terns at
Oceano Dunes State Vehicle Recreation Area

Dear Mr. Zilke:

For several years, the Department of Fish and Game (DFG) and Department of Parks and Recreation (DPR) have been working together in an effort to prevent the death or injury of California least terns from off-highway vehicle use at Oceano Dunes State Vehicle Recreation Area (ODSVRA). Because the least tern is a species for which no take can be authorized, our joint efforts have been focused on identification and implementation of management measures at ODSVRA to avoid the incidental take of least terns. Toward that end, a revised set of management measures was developed in the summer of 2001 that, to the best of our knowledge, was successful in preventing vehicle-related mortality of terns during the remainder of the 2001 breeding season and the entire 2002 season.

Two fledgling least terns were found dead, however, in separate incidents last summer. Both deaths occurred sometime between late afternoon and early morning in an area immediately east of the fenced nesting area enclosures, which suggests the birds might have been using this area for their night roosts. Vehicle strikes are the most likely cause of death. These tern deaths in July and August 2003 indicate that the protective measures previously developed by our agencies and described in my May 6, 2002 letter to former Superintendent Steve Yamaichi need to be supplemented since the existing measures, while beneficial, have not completely avoided take of least terns in the area east of the existing nest enclosures.

The purpose of this letter is to present additional measures that DFG believes are needed to avoid further take of terns until a study can be completed to gather information about what areas are used by terns for night roosting. This letter does not address actions that DFG may subsequently recommend to

Conserving California's Wildlife Since 1870

enhance habitat values at ODSVRA for California least terns, snowy plovers and other sensitive species. In addition, DFG may need to modify its recommendations from time to time, as it has in the past, as new information becomes available.

Least terns' nest establishment and chick rearing occur on the barren sands in areas of the ODSVRA. Young terns fly three weeks after hatching, and parents and fledglings often congregate at freshwater ponds and estuaries where the fledglings learn to fish. Oso Flaco Lake and the other dunes lakes located immediately east of OSDVRA have been recognized for more than 20 years as important post-breeding foraging areas. The area between the nest enclosures and the dune lakes has been open to off-highway vehicle activity day and night.

Since 1997, the ODSVRA has undertaken monitoring activities, analysis of collected data, and completion of annual reports for the breeding and nesting season of the least tern. These activities were designed not only to meet the requirements of the U.S. Fish and Wildlife Service (USFWS) Biological Opinion 1-8-95-F/C-17, but to ensure breeding and nesting success within the ODSVRA operational boundaries. Nocturnal activities of least terns are not as well documented as nesting behavior, however. While nesting adults have a certain amount of site fidelity to the loosely defined colony, pre-breeding adults and fledglings may not exhibit the same loyalty to a specific location. Just prior to the breeding season, least tern adults are known to have night roosts that are separate from the main colony and the night roosting behavior of fledglings is largely unknown.

As noted above, circumstances suggest the two birds killed last summer were struck while using the area east of the nest enclosures for their night roosts. DFG consequently believes that to avoid further take of least terns, it is necessary to close the area immediately east of the nest enclosures to nighttime vehicle use during the 2004 tern breeding season until DPR is able to collect more specific information about night roosting locations of least terns at ODSVRA. From discussions we have had with DPR in recent months, it is our understanding that the measures outlined below are feasible in addition to continued implementation of the measures outlined in our May 6, 2002 letter, a copy of which is attached.

DFG believes the following additional measures are necessary during the 2004 breeding season (from approximately May 1 to September 15) to avoid further take of least terns during off-highway vehicle use at ODSVRA:

1. DPR should establish and enforce an effective nighttime vehicle closure of the area immediately east of the fenced nest enclosures as

follows: between Post 7 and Post 8, the night closure area should extend from the nest exclosures' east fence to a line 200 feet east of that fence; and between Post 6 and 7, the night closure area should extend from the nest exclosures' east fence to a line parallel to the beach and 200 feet east of where the nesting exclosures' east fence line at Post 7 was constructed in 2003. This closure should encompass both sites where fledgling terns were found dead during the 2003 breeding season. DPR should take whatever steps are necessary to ensure vehicles do not use this area between sunset and sunrise during the tern breeding season.

2. DPR should conduct a study during 2004 to determine where least terns are roosting at night. Work on this study should commence as soon as least terns arrive at ODSVRA and continue until the terns leave for the winter. DPR should obtain DFG's and USFWS's approval of the study design. Results of this study will be used to determine what if any measures may be needed in future years to protect roosting terns outside the nest exclosures.

The least tern monitoring and protection program that ODSVRA implemented during the 2002 and 2003 breeding seasons has been instrumental in greatly reducing the chances for take of least terns at ODSVRA and should be continued. The nighttime roosting study is not intended to redirect ODSVRA's previous commitment to monitor and protect least terns throughout the park.

DFG believes that if the measures described above and those detailed in our May 6, 2002 letter are implemented, activities can be conducted without death or injury of least terns. Our opinion that take can be avoided is based in large part on DPR's assurance that the nighttime vehicle closure described above can be enforced to effectively prevent unauthorized traffic without installation of additional fences. If a least tern is killed or injured or discovered dead or injured despite measures implemented to protect the birds, DPR will notify and then consult with DFG and USFWS according to the procedures described in our 2002 letter.

In closing, I would like to thank ODSVRA and DPR management and staff for their cooperation over the past several years in addressing measures needed to avoid take of least terns. As noted above, DPR's recent efforts to monitor and protect listed birds in this park have largely been a success, and are undoubtedly an important factor behind the increase in least tern and snowy plover numbers at ODSVRA.

Mr. Andy Zilke
ODSVRA
March 18, 2004
Page 4

If DPR encounters any difficulties implementing the measures described above, please contact the Department as soon as possible so that these issues can be resolved. If you have any questions or concerns, please contact Mr. Bob Stafford at (805) 528-8670.

Sincerely,

Robert Floerke
Regional Manager
Central Coast Region

Enclosure

cc: Mr. David Widell, Deputy Secretary
California Resources Agency

Ms. Ruth Coleman, Director
Department of Parks and Recreation

Mr. Ryan Broddrick, Director
Department of Fish and Game

Mr. Michael Valentine, General Counsel
Department of Fish and Game

Mr. Steve Henry
U.S. Fish and Wildlife Service, Ventura

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**June 13, 2018**

California Department of Parks and Recreation
Attn: Katie Metraux, Acting OHMVR Planning Manager
1725 23rd Street, Suite 200
Sacramento, CA 95816

Re: Notice of Preparation of an Environmental Impact Report for California Department of Parks and Recreation's Proposed Pismo State Beach and Oceano Dunes State Vehicular Recreation Area Public Works Plan

Dear Ms. Metraux:

Thank you for the opportunity to provide some initial comments and preliminary suggestions regarding the Notice of Preparation (NOP) of an Environmental Impact Report (EIR) for State Parks' proposed Public Works Plan (PWP)¹ intended to cover Pismo State Beach and the Oceano Dunes State Vehicular Recreation Area (ODSVRA). We have the following comments on the NOP and the PWP process more broadly.

According to the NOP, the proposed PWP will document existing conditions, consider improvement projects and management programs to improve access for motorized and non-motorized public recreation opportunities, and include development policies and programs. Notably, the NOP indicates that the PWP will also include a number of specific proposed park improvement projects,² but these projects are not further identified in the NOP past a reference to them. The NOP further states that State Parks will use the EIR to consider the environmental effects of the proposed PWP and proposed park improvements, and, if necessary, to develop mitigation measures to reduce such potential impacts. And finally, the NOP states that State Parks will consider a reasonable range of alternatives when reviewing the PWP for approval.

As an initial matter, we note that the NOP does not provide the actual proposed PWP, nor any specific details on the proposed park improvement projects, and thus these comments at this point should be understood as preliminary. Presumably, State Parks intends to develop more

¹ A PWP is a vehicle for planning and regulation under the Coastal Act that allows certain public agencies to propose a certain set of projects and other types of development that can be identified in a PWP that the Commission certifies as consistent with the Coastal Act. Following such certification, the public agency, in this case State Parks, can then perform the identified PWP development subject to reporting it to the Commission and without a CDP, provided it is PWP consistent. In other words, the PWP can serve to replace the need for case-by-case CDP evaluation, and can significantly streamline certain public agency activities.

² Identified as projects A through H as follows: (a) Oso Flaco Campground and Public Access Project, (b) Park Corporation Yard Improvement Project, (c) Grover Beach Lodge Site Project (including La Sage Bridge and Dump Relocation), (d) Oceano Campground Infrastructure Improvement Project, (e) Pier and Grand Avenue Entrances and Pier Avenue Lifeguard Tower Project, (f) North Beach Campground Facility Improvements, (g) Butterfly Grove Public Access Project, and (h) Pismo State Beach Boardwalk Project.

detailed information on the PWP and the projects as part of the preliminary EIR process, including to allow the EIR to appropriately function as a means of disclosing potential environmental impacts associated with PWP and project implementation, and identifying potential alternatives and mitigation measures to avoid and otherwise address such impacts. We are likely to have more feedback for you when State Parks has provided more detail on the PWP and the projects themselves.

In addition, given that we have already briefed State Parks staff in meetings to date regarding the PWP and potential issues, we do not intend to elaborate in fine detail again on those points here. Instead, we would highlight that one of the most critical things that any approvable PWP and EIR needs to address is the ways in which it is intended to be used to address coastal development permit (CDP) number 4-82-300 requirements. As you know, that CDP identifies the basic parameters for ODSVRA operation under the Coastal Act, including for Park access locations, off-highway vehicle (OHV) riding and camping parameters, overall use limits, and habitat and sensitive species protection requirements. Importantly, and as articulated extensively in past Commission CDP re-reviews in 2015 and 2017, many of the key operational parameters, most notably in terms of access into the Park and overall use limits,³ have never been finalized through the required CDP amendment and Local Coastal Program (LCP) amendment processes, and thus they are currently authorized through the CDP on a temporary basis only at this point. In addition, the Commission retains the authority to review State Parks' operations on a yearly basis and to identify necessary changes, particularly related to addressing potential habitat impacts due to vehicular use. If, and as we understand State Parks' intent here, the PWP is intended to be a vehicle to help resolve some of these issues moving forward, then the PWP and the EIR need to address these issues directly, and clearly articulate the manner in which that would be accomplished. For more information and details on these previously identified issues, please consult the January 2017 ODSVRA re-review staff report (available at <https://documents.coastal.ca.gov/reports/2017/1/th14a-1-2017.pdf>)

In addition to those CDP issues, we would also note that another key PWP and EIR issue to be addressed is the relationship of the PWP to underlying LCP requirements. As you know, a PWP can only be approved if it is consistent with the LCPs that govern the affected area (in this case, LCPs for the Cities of Pismo Beach and Grover Beach, and for San Luis Obispo and Santa Barbara Counties). In particular, most of ODSVRA is covered by the San Luis Obispo County LCP, and certain ODSVRA activities, while covered by the underlying CDP, are not consistent in all respects with the LCP (e.g., OHV riding is not allowed in certain areas under the LCP that are currently authorized via the CDP for such uses). As described in the 2017 re-review documents identified above, we believe these LCP issues were intended to be resolved as part of

³ The two interim entrance points into the Park are at West Grand Avenue and Pier Avenue, and the interim staging area is currently located just south of the two-mile post (i.e., only street legal vehicles are allowed to be operated north of the two-mile post, and OHVs (and street legal vehicles) can be operated south of the two-mile post), and thus OHVs must be transferred via trailers to the interim staging area from the interim West Grand and Pier Avenue entrances. Current use limits that are subject to adjustment allow for a maximum of 2,580 street legal vehicles per day, a total of up to 1,720 OHVs at any given time, and up to 1,000 camping units per day.

finalizing site access and staging parameters. It will be important for the PWP (and any associated EIR) to ensure that it too addresses these interrelated issues, including through a path forward for ultimate resolution to ‘sync’ the CDP, the LCP, and any PWP appropriately. Again, and importantly, the PWP can only be approved if it is in conformity with the underlying LCPs, and we encourage State Parks to undertake consultation with the affected local governments as soon as possible as a means of helping to ensure PWP/LCP consistency.

Similarly, we note that State Parks recently asked for CEQA and NEPA NOP comments (in tandem with the U.S. Fish and Wildlife Service) related to a proposed Habitat Conservation Plan for the proposed PWP. Many of our comments (dated March 12, 2018) on that notice are applicable here, and we incorporate them here by reference (see attached). As indicated in those comments, there are a variety of interrelated issues associated with ODSVRA, and there are a variety of processes that all need to be kept in mind as State Parks’ PWP efforts proceed (including related to the base ODSVRA CDP, the certified LCPs that apply here, and a proposed HCP). If the PWP process is to be successful, it is going to need to carefully integrate these overlapping issues in a way that makes both substantive as well as process sense, including recognizing that each of these processes have different requirements, timelines, and in some cases objectives, and a successful PWP must be responsive to all of them.

In closing, and given that it will form the basis for moving forward, we particularly look forward to seeing a proposed PWP document as soon as possible, and are likely to provide additional comment at that time. In any case, we are hopeful that State Parks’ PWP efforts can help to resolve ongoing and contentious issues associated with ODSVRA, and we stand ready to assist in that effort as much as possible. As you know, the Commission has been deeply involved for many years with ongoing issues associated with the balancing of active public recreational and access opportunities for all with the protection and enhancement of sensitive species and their habitats in the Oceano Dunes District, both through the underlying CDP as well as the LCP. We are hopeful that a PWP and any associated CEQA supporting documents (as well as NEPA and HCP documents) can address the CDP and LCP issues identified above in a manner that best allows for robust decision-making and good public policy. We look forward to continued collaboration on these important coastal resource issues of shared concern, and are available for consultation as you proceed forward. Please do not hesitate to contact me if you have any questions or would like to further discuss these matters.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Kahn". The signature is fluid and cursive, with the first name "Kevin" and last name "Kahn" clearly distinguishable.

Kevin Kahn
District Supervisor
Central Coast District Office
California Coastal Commission

Attachment: March 12, 2018 PWP HCP NOP/NOI Comments

cc: Mat Fuzie, Jim Newland, and Kevin Pearce, State Parks
Julie Vance, CDFW
Lena Chang, USFWS
Matt Janssen, San Luis Obispo County

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**March 12, 2018**

Ronnie Glick, Senior Environmental Scientist
California Department of Parks and Recreation
Oceano Dunes District
340 James Way, Suite 270
Pismo Beach, CA 93449

Lena Chang, Acting Assistant Field Supervisor
United States Fish and Wildlife Service
Ventura Fish and Wildlife Office
2493 Portola Road, Suite B
Ventura, CA 93003

Re: United States Fish and Wildlife Service (USFWS) and California Department of Parks and Recreation (State Parks) Proposed Oceano Dunes District Habitat Conservation Plan (HCP) Notice of Preparation (NOP) and Notice of Intent (NOI)

Dear Mr. Glick and Ms. Chang:

Thank you for the opportunity to provide some initial comments and preliminary suggestions regarding the NOP (for purposes of CEQA) and NOI (for purposes of NEPA) for State Parks' proposed HCP covering the Oceano Dunes District (ODD), which is comprised of Pismo State Beach, Pismo Lake, and Oceano Dunes State Vehicular Recreation Area (ODSVRA). HCPs are required under the federal Endangered Species Act (ESA) for USFWS issuance of an Incidental Take Permit (ITP), and the CEQA/NEPA process is being undertaken by State Parks and USFWS, respectively, in support of a potential HCP/ITP for State Parks in relation to the ODD. We have the following comments.

According to the NOP/NOI, the proposed HCP and corresponding ITP will outline a 25-year plan to address ESA issues and requirements in the ODD, including identifying measures designed to avoid, and where unavoidable to minimize and mitigate, the effects of "covered activities" to ensure the conservation, protection, and contributions to the recovery of "covered species" (namely, the federally threatened Western snowy plover (WSP) and California red-legged frog, and the federally endangered California least tern (CLT), tidewater goby, Gambel's watercress, La Graciosa thistle, marsh sandwort, and Nipomo Mesa lupine). As proposed in the NOP/NOI, covered activities would include all lawful activities for which State Parks has responsibility that could result in take of the aforementioned covered species, including public use/recreation management, natural resources management, and park/beach management. On this point the NOP/NOI states that State Parks would manage impacts to these covered species due to covered activities largely in the same manner it currently operates, including by installing protective fencing and by undertaking certain activities associated with habitat protection and restoration, invasive plant and animal control, habitat monitoring, and water quality

improvements. In addition to the “no action” alternative (i.e., where State Parks continues to operate as it has without an HCP/ITP), the NOP/NOI indicates that USFWS and State Parks will also evaluate implementation of a proposed HCP where State Parks modifies its current operation by allowing for the seasonal enclosure fencing for WSP and CLT breeding protection to be modified to expand vehicular access and use. In all cases, the NOP/NOI indicates it would evaluate current lawfully established activities, and it will not evaluate potential changes to current daily limits on the number of street legal and off-highway vehicles (OHV) at ODSVRA.

As a preliminary matter, the NOP/NOI purports to solicit comments for an environmental analysis regarding the implementation of a proposed HCP, but it does not provide the actual proposed HCP that is going to be evaluated in that regard. In that sense, it is difficult to provide detailed comments on what, specifically, the CEQA/NEPA process should address. It may be that USFWS/State Parks is responding to certain uncertainties associated with current ODSVRA operations, or it could be for some other reason, but the lack of a proposed HCP makes it difficult to provide as directive of comments as might be possible if a proposed HCP were also to be provided with the NOP/NOI. As such, we may have more substantive and detailed comments when we see the proposed HCP and/or the draft EIR/EIS documents.

With respect to current operational uncertainties and the Commission’s role, State Parks operates ODSVRA under a coastal development permit (CDP) issued by the Coastal Commission in 1982 (CDP 4-82-300, as amended). That CDP identifies the basic parameters for ODSVRA operation under the Coastal Act, including for Park access locations, OHV riding and camping parameters, overall use limits, and habitat and sensitive species protection requirements. Importantly, many of the key operational parameters, most notably in terms of access into the Park and overall use limits,¹ have never been finalized through the required CDP amendment and Local Coastal Program (LCP) amendment processes, and thus they are currently authorized through the CDP on a temporary basis. In addition, the Commission retains the authority to review State Parks’ operations on a yearly basis and to identify necessary changes, particularly related to addressing potential habitat impacts due to vehicular use. It is not clear from the NOP/NOI how the proposed HCP and/or ITP intends to address the temporary nature of the CDP authorization and the potential for State Parks’ operations to change over time, including in relation to yearly Commission reviews. Critically, in proposing to evaluate State Parks’ current operations, it is not clear how USFWS/State Parks intends to address the issues associated with the need for State Parks to finalize certain critical aspects of its operation that are only temporarily authorized under the CDP, including Park access and overall use limits. These current interim parameters are some of those most clearly tied into potential ESA species issues, and thus the lack of finality

¹ The two interim entrance points into the Park are at West Grand Avenue and Pier Avenue, and the interim staging area is currently located just south of the two-mile post (i.e., only street legal vehicles are allowed to be operated north of the two-mile post, and OHVs (and street legal vehicles) can be operated south of the two-mile post), and thus OHVs must be transferred via trailers to the interim staging area from the interim West Grand and Pier Avenue entrances. Current use limits that are subject to adjustment allow for a maximum of 2,580 street legal vehicles per day, a total of up to 1,720 OHVs at any given time, and up to 1,000 camping units per day.

through the CDP and the LCP processes must somehow be addressed in any proposed HCP and CEQA/NEPA documents, as well as any eventual ITP.

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),² which effort is currently in the beginning and formative stages now. 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 San Luis Obispo County Air Pollution Control District and the California Air Resources Board), and other resource protection requirements. In other words, the PWP process currently being undertaken by State Parks, which will ultimately be submitted for Coastal Commission review and certification, 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, then it will need to resolve issues still outstanding there, 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 fluid nature of ODSVRA at this time, 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. And it is even less clear to us how the CEQA/NEPA document would evaluate the range of potential outcomes at this time given the uncertainties identified above. It appears that the HCP and any CEQA/NEPA documents based on evaluating it will need to reflect ODSVRA's transitory reality at this juncture, including that the current configuration is interim and potentially subject to significant change. 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. For example, if ODSVRA access and staging are moved from their current locations to a more southerly point, how would this affect covered species and their protection needs? If OHV riding and camping were located in a different area to account for relocated access and staging locations, or to respond to air quality considerations or otherwise, how would these alternative locations similarly affect covered species? Similarly, while the NOP/NOI states that vehicle and camping use limits are not proposed for amendment, including because they are approved by CDP 4-82-300, as discussed above, those limits too are interim and subject to modification, including through the CDP-required yearly evaluation, based on resource protection and public recreation needs. And State Parks has more recently been

² A PWP is a vehicle for planning and regulation under the Coastal Act that allows certain public agencies to propose a certain set of projects and other types of development that can be identified in a PWP that the Commission certifies as consistent with the Coastal Act. Following such certification, the public agency, in this case State Parks, can then perform the identified PWP development subject to reporting it to the Commission and without a CDP, provided it is PWP consistent. In other words, the PWP can serve to replace the need for case by case CDP evaluation, and can significantly streamline certain public agency activities.

looking at a ‘no net loss’ of riding area concept whereby any reductions in OHV riding areas, for whatever reason, are offset by creating new riding areas, presumably in adjacent dune habitat areas, and this too needs to be evaluated in the HCP/ITP and CEQA/NEPA processes.

In sum, the proposed HCP and its associated CEQA/NEPA reviews 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 we recognize and agree that 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 a PWP can or will be structured to address all of the above. And given that, it is even less clear to us how the CEQA/NEPA document will evaluate environmental impacts due to proposed HCP implementation, including because it is not clear what proposed HCP would be evaluated. At a minimum, the proposed HCP needs to be provided as part of any CEQA/NEPA scoping. Thus, if the CEQA/NEPA process is to move forward, we would strongly recommend that the proposed HCP be drafted in a manner that reflects the above uncertainties, and that provides for appropriate adaptive changes to occur in response to identified benchmarks, including related to potential changes associated with the CDP, the LCP, and the potential PWP, and to associated finalized access, staging, and use parameters. Once that proposed draft HCP is available for public review, we recommend that the associated environmental documents then evaluate the potential impacts and mitigation measures necessary for a series of different ODSVRA configurations and assumptions coming out of the HCP, which by necessity are likely to be required to be iterative and adaptive in order to account for the range of potential future Park changes at this juncture.

In addition to the above described overarching concerns/suggestions, we have the following specific issues that both the HCP and its EIR/EIS should evaluate.

In terms of alternatives, it is clear given the above discussion that the range of currently proposed alternatives to be evaluated in the CEQA/NEPA documents is simply not adequate to identify the potential environmental impacts and mitigations. In addition, and even bracketing the level of uncertainty, the NOP/NOI identifies only two alternatives to be evaluated: one a ‘no action’ alternative where State Parks would continue to operate as it has without an HCP/ITP, and a second where State Parks modifies its current operation by allowing for the seasonal enclosure fencing for WSP and CLT breeding protection to be modified to allow for expanded vehicular access and use. It appears clear to us that such a limited set of alternatives will not provide decision makers with the appropriate level of information and tools to be able to make informed decisions. In fact, the first alternative is to maintain the status quo, and the second contemplates actually *reducing* ESA species protections. At a minimum, the CEQA/NEPA documents need to evaluate a full range of alternatives with the best chance of meeting project objectives (presumably ESA species protection) with the least amount of coastal resource impacts, both in terms of recreation and habitat. Toward that end, it seems imperative that alternatives be shaped based on data (for example, avoiding use in areas identified as the most acute in terms of species impacts), and that each offer a co-equal evaluation of the costs and benefits environmentally of

each alternative. We do not see how evaluating only ‘do nothing’ and ‘reduce ESA-species protections’ alternatives fulfills those needs, and would strongly suggest additional alternatives be identified, including those based on avoiding use in areas identified as the most problematic in terms of species impacts, including so decision makers are properly equipped with a full understanding of the potential options for addressing ESA species needs in Oceano Dunes. The evaluation of alternatives is a fundamental component of CDP, LCP, and PWP conformance processes, and we would expect that the CEQA/NEPA documents range of alternatives are able to provide a co-equal evaluation of the various ways project objectives can be achieved, and that they provide a full spectrum of possibilities for consideration taking into account Coastal Act requirements and objectives. We are available for consultation on this point as the CEQA/NEPA process progresses, should that prove useful to you.

With respect to Western snowy plover (WSP) in particular, take of the WSP in ODSVRA is well documented, with an increase in take documented in recent years. The HCP should develop specific and enforceable strategies that will eliminate (or at least reduce) the take associated with these and other state and federally listed species. In particular regarding WSP, we believe that there should be an emphasis on policies that address bird deaths during both the breeding season and the overwintering season. Specifically, the policies should address the size, configuration, and seasonal duration of potential WSP exclosures, as well as management practices associated with wrack availability, vegetation density, and predator management. In addition, impacts to WSP associated with recreation, particularly the unique impacts OHV recreation and special events engender, should be addressed, including location restrictions (both permanent and seasonal), appropriate speed limits, signage and other means of public education for OHV riders, as well as appropriate mechanisms of enforcement. Ultimately, the CEQA/NEPA documents must then evaluate these provisions, including providing an assessment of potential impacts and mitigations and the associated evaluation of alternatives discussed above.

Similarly, in terms of California least tern (CLT), take of CLT at ODSVRA is both well documented and has increased, as you are aware, in recent years. Thus, we believe that the HCP process is also an opportune time to update CLT protections at ODSVRA, including ensuring policies are reflective of where birds congregate. Protective policies must be flexible enough to be responsive to any changes in CLT behavior or favored habitat, and large enough to accommodate any population growth should this occur. Moreover, enforced nest buffer distances and fencing configurations and materials must be determined from the most up-to-date scientific information, and empirically verified. The general approach to WSP and CLT management should be focused not just on protection of current populations of these species, but designed to provide optimal conditions for these species over time. All management measures should be deferential to expert recommendations and should be adaptive. And again, the CEQA/NEPA documents must also address these same issues in similar ways as for WSP.

With respect to aquatic resources, the HCP will need to carefully consider recommendations and restrictions necessary to safeguard ODSVRA’s fish and aquatic-affiliated species. Policies concerning the integrity of the ephemeral Arroyo Grande Creek, an area which supports the

federally listed tidewater goby, steelhead, and the California red-legged frog, require particular attention, particularly from vehicular creek crossings. Currently, vehicles are allowed to cross the creek at water depths capable of supporting fish passage when the creek is connected to the ocean, and additional protective measures appear acutely warranted here. In addition, in winter, before natural lagoon breaching occurs, policies need to address OHV use in the vicinity of the lagoon mouth; otherwise, accidental breaching and associated take could also occur. In addition to addressing policies of OHV use in the vicinity of Arroyo Grande Creek, as discussed earlier, the HCP needs to also evaluate the impacts and protective measures associated with alternative Park access and staging areas, particularly those that would bypass Arroyo Grande Creek and lagoon altogether. Finally, we also strongly encourage an analysis of OHV impacts on annual grunion runs, which are known to occur in the ODSVRA. And again, any CEQA/NEPA documents must also address these same issues, including in terms of alternatives evaluation.

Lastly, any proposed HCP and supporting CEQA/NEPA documents must clearly specify enforcement provisions to ensure that final HCP policies and requirements are fully carried out. For example, any HCP needs to fully evaluate success and non-compliance criteria, including how State Parks will mitigate for any take or other adverse impacts to covered species not authorized by a final HCP/ITP. To ensure accountability, the HCP must have a strong monitoring and reporting function. Public education, including by informing visitors of habitat protection requirements, is a key part of this enforcement strategy, and the HCP should identify these public education parameters as well.

Again, thank you for the opportunity to provide these initial comments on the proposed HCP and the NOP/NOI. As you know, the Commission has been deeply involved for many years with the ongoing issues associated with the balancing of active public recreational and access opportunities for all with the protection and enhancement of sensitive species and their habitats in the Oceano Dunes District, both through the underlying CDP as well as the LCP, and potentially through an upcoming PWP. The Commission's program and involvement necessarily and directly intersects with that of USFWS under the ESA, and we are hopeful that an HCP/ITP and any associated CEQA/NEPA supporting documents can bridge the above-described analytic and substantive gaps to best allow for robust decision-making and good public policy. We look forward to continued collaboration on these important coastal resource issues of shared concern, and are available for consultation as you proceed forward. Please do not hesitate to contact me if you have any questions or would like to further discuss these matters.

**Ronnie Glick (State Parks), Lena Chang, USFWS
Oceano Dunes District HCP NOP/NOI Comments
March 12, 2018
Page 7**

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Kahn". The signature is fluid and cursive, with the first name "Kevin" and last name "Kahn" clearly distinguishable.

Kevin Kahn
District Supervisor
Central Coast District Office
California Coastal Commission

cc: Mat Fuzie and Kevin Pearce, State Parks
Julie Vance, CDFW
Matt Janssen, San Luis Obispo County

CALIFORNIA COASTAL COMMISSION

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**M E M O R A N D U M**

TO: Kevin Kahn, Central Coast District Supervisor

FROM: Laurie Koteen, Ph.D., Staff Ecologist

RE: ESHA Determination With Respect to the Oceano Dunes State Vehicular Recreation Area (ODSVRA)

DATE: June 21, 2019

Documents Reviewed:

- Alpert, Peter, 2016. Coastal Dunes, in *Ecosystems of California*, Erika Zavaleta and Harold Mooney, (eds.), pgs. 409 – 427.
- Barbour, M. G., and A. F. Johnson. 1988. Beach and dune in *Terrestrial Vegetation of California*, M. G. Barbour and J. Major, (eds.), California Native Plant Society, Sacramento, Pgs. 223-261.
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- Dixon, John, 2011, Memorandum to Ruby Pap, re: Lawson’s Landing, Exhibit 6 in Proposed revised findings of consolidated coastal development permit, application no.2-06-018.
- Dugan, Jenifer and David Hubbard, 2016. “Sandy Beaches”, in *Ecosystems of California: Threats and Responses*, Erika Zavaleta and Harold Mooney, (eds.), pgs. 28- 29.
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- Pickart, A.J. and M.G. Barbour. 2007. Beach and Dune. Pages 155-179 in M.G. Barbour, T. Keeler-Wolf, and A.H. Schoenherr, eds. *Terrestrial Vegetation of California*. UC Press, Berkeley.
- Pickart, A.J. and J.O Sawyer. 1998. *Ecology and Restoration of Northern California Coastal Dunes*. California Native Plant Society Press, Sacramento.
- Sawyer, J.O., T. Keeler-Wolf, and J.M. Evans. 2009. *A Manual of California Vegetation*. 2nd edition. California Native Plant Society Press, Sacramento.
- San Luis Obispo Department of Planning and Building, Last Revised 2018. *Coastal Zone Land Use Ordinance: Local Coastal Program, Title 23 of the San Luis Obispo County Code*, 631 pgs.
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The Oceano Dunes State Vehicular Recreation Area (ODSVRA) is comprised of a vast beach and dune complex unique in California for both its linear and landward extent. The beach and dune system of which the ODSVRA is a part, extends from the curve of the Pismo Beach coastline to the north, reaching southward from this point to include Grover Beach and the Pismo Dunes Natural Preserve, Oceano Dunes, Guadalupe-Nipomo Dunes National Wildlife Refuge, and the Rancho Guadalupe Dunes County Park. Regionally, as part of the Santa Maria Complex, delineated by the area from San Luis Obispo Bay to Point Conception, this area represents the largest remaining dune system in the western United States¹. The sand that composes this dune system derives from the Pleistocene era when the rocky sediments that accumulate in offshore inter-continental areas were exposed and blown onshore during periods when sea level was much lower than today². This origin story of central California dune sediments is distinct from other areas of California where sediments are linked to dune-forming processes during the Holocene era, contributing to its rich geologic history. Yet, the configuration of the dune system today is quite different from the natural formation of 450,000 years prior, having been greatly altered by the development that now overlays and stabilizes much of the inland extent of the historic dunes. Yet, in comparison with other dune complexes along California's coast that are more confined and hemmed in by inland urban development, the dunes of Oceano and the surrounding area remain essentially undeveloped to a high degree extending several miles inland in places before reaching other uses and development, extending from sparsely vegetated beaches and foredunes to

¹ Alpert, Peter, 2016. Coastal Dunes, in *Ecosystems of California*, Erika Zavaleta and Harold Mooney, (eds.), pgs. 409 – 427.

² Pickart AJ, Barbour MG. 2007. Beach and Dune. Pages 155-179 in Barbour MG, Keeler-Wolfe T, Schoenherr AH, eds. *Terrestrial Vegetation of California*. Berkeley, CA: UC Press.

large tracts of back dunes and swales composed of Central Coast dune scrub vegetation within park boundaries and neighboring private lands. Within the ODSVRA, the foredunes, where they remain, rise above the wide beach expanse in a long uneven ridge parallel to the prevailing wind direction, which is from the northwest. Beyond, to the east, they open to a vast dune sheet characterized by dune swales, transverse dunes and incipient back dunes. Several wetlands are scattered throughout the back dune area, where intense winds have scoured sands to a depth that reveals groundwater. Small lakes supplied by inland creeks are also present, some ephemeral, with Oso Flaco Lake the largest among them.

Here, I document the natural resources that comprise the ODSVRA and evaluate the status of these resources as rising to the level of an environmentally sensitive habitat area, or ESHA. ESHAs are protected both under the Coastal Act and the San Luis Obispo Local Coastal Program (LCP). Section 30107.5 of the Coastal Act is defines ESHA as:

Any 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 could be easily disturbed or degraded by human activities and developments.

The LCP defines ESHA consistent with Coastal Act Section 30107.5 as areas “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, Figure 1). Within areas designated as 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).³ SRAs are specific types of ESHA called out under the LCP that are governed by additional provisions that serve to further protect such resource areas from degradation. Thus, the LCP maps the entire ODSVRA area as ESHA and thus categorically designates its entirety as ESHA, and therefore subject to the LCP’s ESHA protection policies.

In addition to the LCP’s mapped ESHA designation, several habitat attributes bolster the reasoning for this definition. In other words, in addition to the LCP’s categorical determination, the rarity and especially valuable habitat resources on the ground independently would warrant the entirety of ODSVRA to be designated as ESHA. Below, I will elaborate on additional reasons supporting a determination that the entire land area of the ODSVRA is ESHA.

Dunes

³ Including the Oso Flaco Lakes SRA, the Dune Lakes SRA, and the Black Lake Canyon SRA portions of the Park.

Dune-backed beaches account for roughly a quarter of California's shoreline but together, beach-dune complexes constitute only 2-3% of the State's landmass,⁴ making them one of the State's rarest landscapes. In fact, coastal sand dunes constitute one of the most geographically constrained habitats in California. They only form in certain conditions of sand supply in tandem with wind energy and are shaped by wind direction. Dunes are a dynamic habitat subject to extremes of physical disturbance, drying, and salt spray, and support a unique suite of plant and animal species adapted to such extremes of heat, moisture and wind. Many dune complexes and their ability to support rare dune vegetation and wildlife communities throughout the state have grown increasingly uncommon. Even where degraded, the Coastal Commission has typically found this important and vulnerable habitat to be ESHA due to the rarity of the physical habitat and its important ecosystem functions.

As discussed above, the dunes at ODSVRA are part of a larger and significant and sensitive ecological system, the Guadalupe-Nipomo dunes complex, that represents the largest remaining dune system in the western United States. And although degraded from current ODSVRA vehicular activities, these dunes are home to a variety of sensitive species (see also below). 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. 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.” In addition, 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.

In short, the dunes themselves are ESHA under the LCP.

Rare Species and Habitats

In addition, the entire ODSVRA must be considered ESHA due to the large number of rare species and rare habitats that are found within its borders. Two classification systems are routinely used by the State of California to characterize the vegetation communities within state borders; one, the Manual of California Vegetation, (MCV2) is compiled jointly by the California Department of Fish and Wildlife, (CDFW) and the California Native Plant Society. This system divides vegetation communities into a large number of vegetation alliances, and assigns each a rarity ranking globally (G1 – G5 or no rank)⁵ and statewide (S1 - S5 or no rank)⁶, with lower numbers representing rarer vegetation communities, and S5 or no rank representing communities that are very common. The Holland

⁴ Pickart AJ, MG Barbour. 2007. Beach and Dune. Pp. 155-179. In: Terrestrial Vegetation of California (Third Edition). MG Barbour, T Keeler-Wolf, AA Schoenherr, Eds. University of California Press. Berkeley.

⁵ **G1 or S1** = Less than 6 viable element occurrences OR less than 1,000 individuals OR less than 2,000 acres, **G2 or S2** = 6-20 element occurrences OR 1,000-3,000 individuals OR 2,000-10,000 acres, **G3 or S3** = 21-80 element occurrences OR 3,000-10,000 individuals OR 10,000-50,000 acres, **G4 or S4** = Apparently secure; this rank is clearly lower than G3 but factors exist to cause some concern; i.e., there is some threat, or somewhat narrow habitat, **G5 or S5** = Population or stand demonstrably secure to ineradicable due to being commonly found in the world.

⁶ Rare state species and Holland type habitats are also ranked according to threat level. The threat is indicated by the number after the “.”. The nomenclatures is as follows: .1 = very threatened, .2 = threatened, .3 = no current threats known.

classification system, also a product of the CDFW, was introduced by Robert Holland in 1986. Although each vegetation community described under the Holland system generally corresponds to several alliances under MCV2, the Holland system is still used in practice, and provides explanatory value, although the MCV2 is generally preferred. Following CDFW's lead, the Coastal Commission has in the past considered as rare any MCV2 alliance or Holland classification that has a rarity ranking of S1, S2, or S3. A list of the vegetation communities found at the Oceano Dunes appears in Table 1, below. As is evident from the table, most vegetation types that are found at the ODSVRA have a ranking of G3 and S3, and are therefore considered rare. The *Scirpus microcarpus Herbaceous* alliance is even more rare, having a ranking of S2. The Holland type habitats are also classified as rare and threatened.

Table 1: Vegetation Communities found at the Oceano Dunes State Vehicle Recreation Area

Alliance or Holland Classification	Common Name	Classification Type	Rarity Ranking (State and Global)
<i>Abronia latifolia</i> - <i>Ambrosia chamissonis</i> Herbaceous Alliance	Dune Mat	MCV2	G3, S3
<i>Artemisia dracunculus</i> Herbaceous Alliance	Wild tarragon patches	MCV2	G4, S4
<i>Leymus condensatus</i> Herbaceous Alliance	Giant wild rye grassland	MCV2	G3, S3
<i>Isocoma menziesii</i> Shrubland Alliance	Menzies's golden bush scrub	MCV2	G3, S3
<i>Lupinus chamissonis</i> - <i>Ericameria ericoides</i> Shrubland Alliance	Silver dune lupine - mock heather scrub	MCV2	G3, S3
<i>Scirpus microcarpus</i> Herbaceous Alliance	Small-fruited bulrush marsh	MCV2	G4, S2
<i>Cakile (edentula, maritima)</i> Provisional Herbaceous Semi-Natural Alliance	Sea rocket sands	MCV2	no rarity ranking
<i>Mesembryanthemum</i> spp. - <i>Carpobrotus</i> spp. Herbaceous Semi-Natural Alliance	Ice plant mats	MCV2	no rarity ranking
<i>Typha (angustifolia, domingensis, latifolia)</i> Herbaceous Alliance	Cattail marshes	MCV2	G5, S5
Southern Foredunes (Central)		Holland	G1, S1.2
Coastal valley and freshwater marsh		Holland	G3, S2.1
Central Dune Scrub		Holland	G2, S2.2

In addition to rare plant habitats and alliances, many rare plant and wildlife species inhabit the Oceano Dunes, several of which are federally or state threatened or endangered, or species of special concern (SSC). All plant species with a conservation status are listed in Appendix 1. Wildlife species that are listed federally or at the state level appear in Appendix 2, and include the California least tern,

Sternula antillarum browni, the western snowy plover, *Charadrius alexandrinus nivosus*, the California black rail, *Laterallus jamaicensis coturniculus*, and the California red-legged frog, *Rana draytonii*. Tidewater goby, *Eucyclogobius newberryi*, and the Central Coast steelhead, *Oncorhynchus mykiss*, are anadromous species that spend part of their life cycle within Arroyo Grande Creek and Lagoon, and are listed as federally endangered and threatened, respectively. Portions of the ODSVRA are designated by USFWS as critical habitat areas for western snowy plover. Arroyo Grande Creek is also designated as critical habitat for the Central Coast steelhead population.

In addition to the beach and dune system, the ODSVRA contains several dune slack wetlands, and Oso Flaco Lake. This area – the lakes and wetlands - serve as a critical habitat area for the La Graciosa thistle, *Cirsium scariosum var. loncholepis*, a population of which is found at Oso Flaco Lake. The lake also supports the only known extant wild population of Marsh sandwort, *Arenaria paludicola*. Both of these species are listed as state and federally endangered⁷. Gambel's watercress, *Nasturtium gambelii*, another federally endangered species, may also occur at Oso Flaco Lake, although this population has likely hybridized with common watercress, *Nasturtium officinale*. Up to 300 species of resident and migrating birds can be found within the ODSVRA, many seasonal occupants of Lake Oso Flaco, Little Oso Flaco, and dune slack wetlands. Because the lakes and wetlands support rare and endangered species, they would also be designated ESHA under the Coastal Act and the San Luis Obispo LCP.

As is evident from the list of rare habitats, and plant and wildlife species, which are found throughout the ODSVRA, the entire park meets the rarity definition of ESHA as laid out in the San Luis Obispo County LCP and in the Coastal Act, which define ESHA very similarly.

Vulnerability to Human Disturbance

Regarding the second criteria, that an ESHA be “easily be disturbed or degraded by human activities and development”, the species and habitats that make up the ODSVRA (California least tern, western snowy plover, California red-legged frog, etc. and the beach, foredunes, dune slack habitat and back dunes, wetlands, Oso Flaco Lake, and Arroyo Creek) are subjected to significant disturbance and degradation due to human activities, primarily widespread OHV use throughout the ODSVRA, but from other causal factors as well. Examples of the services these habitats provide and their vulnerability to human disturbance abound. The sandy beaches at ODSVRA, for example, provide numerous ecosystem services. These include filtering of ocean waters, buffering shorelines from wave energy, and providing habitat for macro-invertebrates that dwell directly in the intertidal areas of sandy substrate. ODSVRA beaches, among others, are also the repositories of kelp, drift seaweeds and other algal and planktonic deposits that wash onshore and attract insects⁸. Together these infaunal animals, ocean-derived plant matter and associated insects support a larger foodweb of sea and shore birds, fish and pinnipeds at the Oceano Dunes and beaches throughout California. The beaches of the Oceano Dunes also provide substrate for grunions, which spawn in beach sediments monthly from March to August around the time

⁷ USFWS, 2016. Guadalupe-Nipomo Dunes National Wildlife Refuge: Final Comprehensive Conservation Plan and Environmental Assessment, pgs 64-65.

⁸ Dugan, Jenifer and David Hubbard, 2016. “Sandy Beaches”, in *Ecosystems of California: Threats and Responses*, Erika Zavaleta and Harold Mooney, (eds.), pgs. 28- 29.

Dugan, Jenifer and David Hubbard, 2016. “Sandy Beaches”, in *Ecosystems of California*, Erika Zavaleta and Harold Mooney, (eds.), pgs. 389 - 408.

of the full moon⁹. The riding of OHVs over sandy substrate is highly disruptive to the wildlife that inhabit beach sediments, to the availability of organic food sources and of foodweb and reproductive dynamics.

Dune systems are likewise rare and easily degraded, and have undergone significant degradation at the ODSVRA primarily due to OHV use. Along with physical protection and buffering from waves, one major service ODSVRA dunes provide is biodiversity conservation. Many, if not most, northern California dunes are colonized by the invasive European beach grass, *Ammophila arenaria*, which was deliberately introduced in the late 1800s. Southern California dunes beyond the immediate beach strand also suffer from *Amophila* invasion and have been largely paved over with urban homes and infrastructure. In addition to stabilizing dunes meant to be naturally mobile, *Ammophila* also harbors nitrogen-fixing bacteria, which serve to preclude many native taxa from establishing¹⁰. Therefore, intact dune vegetation communities are not often encountered, and remain imperiled by species invasion and damaging land uses. In the ODSVRA, areas where foredunes remain are colonized by European beach grass, which unnaturally stabilizes dunes and causes them to increase in height. In most areas of the park, however, the natural dune formations have been extensively reworked by OHV use, although some efforts are underway to cordon off and revegetate the ODSVRA foredunes in an effort to mitigate dust emissions. Although the dune system is a naturally windy environment and wind is in fact integral to the dynamic progression of dune formation and migration, when the surficial characteristics of the dunes at the ODSVRA are not continually disturbed by OHVs, they provide the additional ecosystem service of significantly reducing particulate matter formation¹¹.

Lastly, Oso Flaco Lake and Little Oso Flaco Lake have also proven to be easily degraded by human activities. Both lakes are fed from Oso Flaco Creek which consists primarily of flows generated from agricultural run-off. As a result, both lakes and their surrounding wetlands have been declared impaired water bodies by the Central Coast Regional Water Quality Control Board and by the US Environmental Protection Agency, with each supporting high levels of pesticides, fertilizer residues and other agricultural inputs¹². Warnings against fish consumption from Oso Flaco Lake have been issued repeatedly.

Conclusion

Under the Coastal Act and the LCP, 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

⁹ CDFW, Marine Region (Region 7), <https://www.wildlife.ca.gov/fishing/ocean/grunion#28352307-grunion-facts-and-faqs>, accessed June 20, 2019.

¹⁰ Barbour, M. G., and A. F. Johnson. 1988. Beach and dune in *Terrestrial Vegetation of California*, M. G. Barbour and J. Major, (eds.), California Native Plant Society, Sacramento, Pgs. 223-261.

¹¹ Koteen, Laurie E., 2017. Memorandum to Kevin Kahn re: Dust Control in the Oceano Dunes State Vehicular Recreation Area, Exhibit 10 in Annual Review of the ODSVRA, CDP 3-12-05.

¹² USFWS, 2016. Guadalupe-Nipomo Dunes National Wildlife Refuge: Final Comprehensive Conservation Plan and Environmental Assessment, pg. 34.

functioning of the dunes habitat system – even when these areas are to one degree or another degraded.

In all, as stated throughout this review, the entirety of the Oceano Dunes State Vehicular Recreation Area must be considered ESHA. All of its constituent habitats, including the beach, foredunes, dune slack area and incipient back dunes, wetlands and lakes, and Arroyo Grande Creek and Lagoon are extended heightened status as ESHA by virtue of their inherent environmental value, as well the rare species and habitats they support. Moreover, these habitats have been significantly degraded by human activity, and remain under threat from ongoing human disturbance. 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.

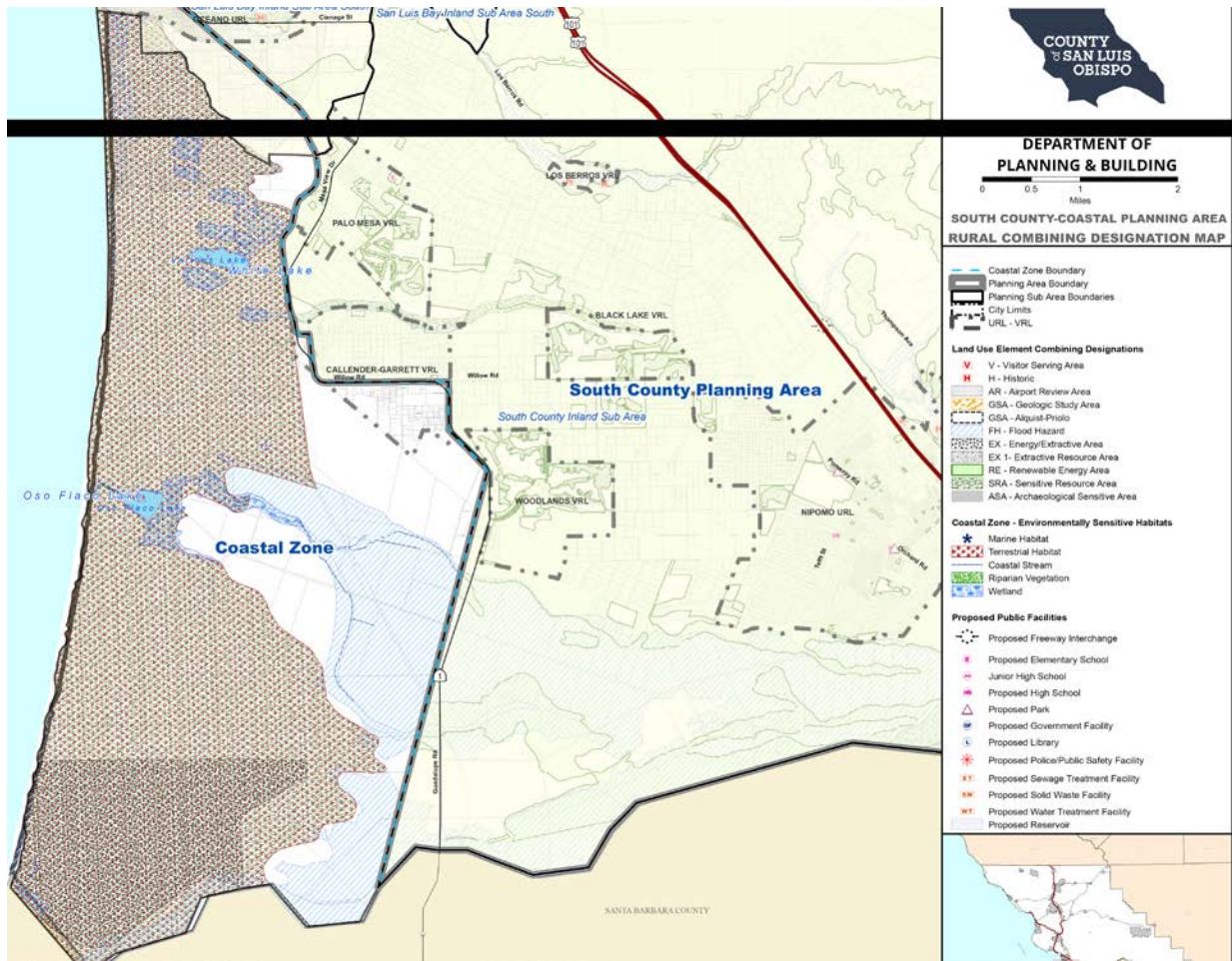


Figure 1: From the San Luis Obispo County LCP South County Coastal Plan ESHA Map. The area in the map above shows the entirety of ODSVRA to be terrestrial habitat ESHA and portions of it wetland ESHA.

Appendix 1: Rare Plant List for Oceano Dunes¹³

Scientific Name	Common Name	ESA Status	Global Rank	State Rank	Rare Plant Rank
<i>Agrostis hooveri</i>	Hoover's bent grass		G2	S2	1B.2
<i>Arctostaphylos pilosula</i>	Santa Margarita manzanita		G2?	S2?	1B.2
<i>Arctostaphylos rudis</i>	sand mesa manzanita		G2	S2	1B.2
<i>Arenaria paludicola</i>	marsh sandwort	FE/ SE	G1	S1	1B.1
<i>Castilleja densiflora</i> var. <i>obispoensis</i>	San Luis Obispo owl's-clover		G5	S2	1B.2
<i>Chenopodium littoreum</i>	coastal goosefoot		G1	S1	1B.2
<i>Cirsium rhotophilum</i>	surf thistle	ST	G1	S1	1B.2
<i>Cirsium scariosum</i> var. <i>loncholepis</i>	La Graciosa thistle	FE/ST	G5	S1	1B.1
<i>Cladium californicum</i>	California saw-grass		G4	S2	2B.2
<i>Clarkia speciosa</i> ssp. <i>immaculata</i>	Pismo clarkia	FE	G4	S1	1B.1
<i>Delphinium parryi</i> ssp. <i>blochmaniae</i>	dune larkspur		G4	S2	1B.2
<i>Dithyrea maritima</i>	beach spectaclepod	ST	G1	S1	1B.1
<i>Erigeron blochmaniae</i>	Blochman's leafy daisy		G2	S2	1B.2
<i>Horkelia cuneata</i> var. <i>puberula</i>	mesa horkelia		G4	S1	1B.1
<i>Horkelia cuneata</i> var. <i>sericea</i>	Kellogg's horkelia		G4	S1?	1B.1
<i>Lupinus nipomensis</i>	Nipomo Mesa lupine	FE/ SE	G1	S1	1B.1
<i>Monardella sinuata</i> ssp. <i>sinuata</i>	southern curly-leaved monardella		G3	S2	1B.2
<i>Monardella undulata</i> ssp. <i>crispa</i>	crisp monardella		G3	S2	1B.2
<i>Monardella undulata</i> ssp. <i>undulata</i>	San Luis Obispo monardella		G2	S2	1B.2
<i>Nasturtium gambelii</i>	Gambel's water cress	FE/ ST	G1	S1	1B.1
<i>Nemacaulis denudata</i> var. <i>denudata</i>	coast woolly-heads		G3G4	S2	1B.2
<i>Orobanche parishii</i> ssp. <i>brachyloba</i>	short-lobed broomrape		G4?	S3	4.2
<i>Scrophularia atrata</i>	black-flowered figwort		G2?	S2?	1B.2

¹³ This list was generated from the CDFW California Native Diversity Database, (CNDDDB).

Appendix 2: List of Rare Wildlife Species at the Oceano Dunes

Scientific Name	Common Name	ESA Status	Global Rank	State Rank	CDFW Status
<i>Ablautus schlingeri</i>	Oso Flaco robber fly		G1	S1	
<i>Accipiter striatus</i>	sharp-shinned hawk		G5	S4	WL
<i>Anniella pulchra</i>	northern California legless lizard		G3	S3	SSC
<i>Areniscythis brachypteris</i>	Oso Flaco flightless moth		G1	S1	
<i>Athene cunicularia</i>	burrowing owl		G4	S3	SSC
<i>Bombus caliginosus</i>	obscure bumble bee		G4?	S1S2	
<i>Charadrius alexandrinus nivosus</i>	western snowy plover	FT	G3	S2S3	SSC
<i>Chlosyne leanira elegans</i>	Oso Flaco patch butterfly		G4G5	S1S2	
<i>Danaus plexippus pop. 1</i>	monarch - California overwintering population		G4	S2S3	
<i>Emys marmorata</i>	western pond turtle		G3G4	S3	SSC
<i>Eucyclogobius newberryi</i>	Tidewater goby	FE			
<i>Laterallus jamaicensis coturniculus</i>	California black rail	ST	G3G4	S1	FP
<i>Lichnanthe albipilosa</i>	white sand bear scarab beetle		G1	S1	
<i>Oncorhynchus mykiss</i>	South central coast steelhead	FT			
<i>Phrynosoma blainvillii</i>	coast horned lizard		G3G4	S3S4	SSC
<i>Plebejus icarioides moroensis</i>	Morro Bay blue butterfly		G5	S2	
<i>Rana draytonii</i>	California red-legged frog	FT	G2G3	S2S3	SSC
<i>Sternula antillarum browni</i>	California least tern	FE/ SE	G4	S2	FP
<i>Taxidea taxus</i>	American badger		G5	S3	SSC
<i>Thamnophis hammondi</i>	two-striped gartersnake		G4	S3S4	SSC

Oso Flaco Campground and Public Access Project – Concept 1

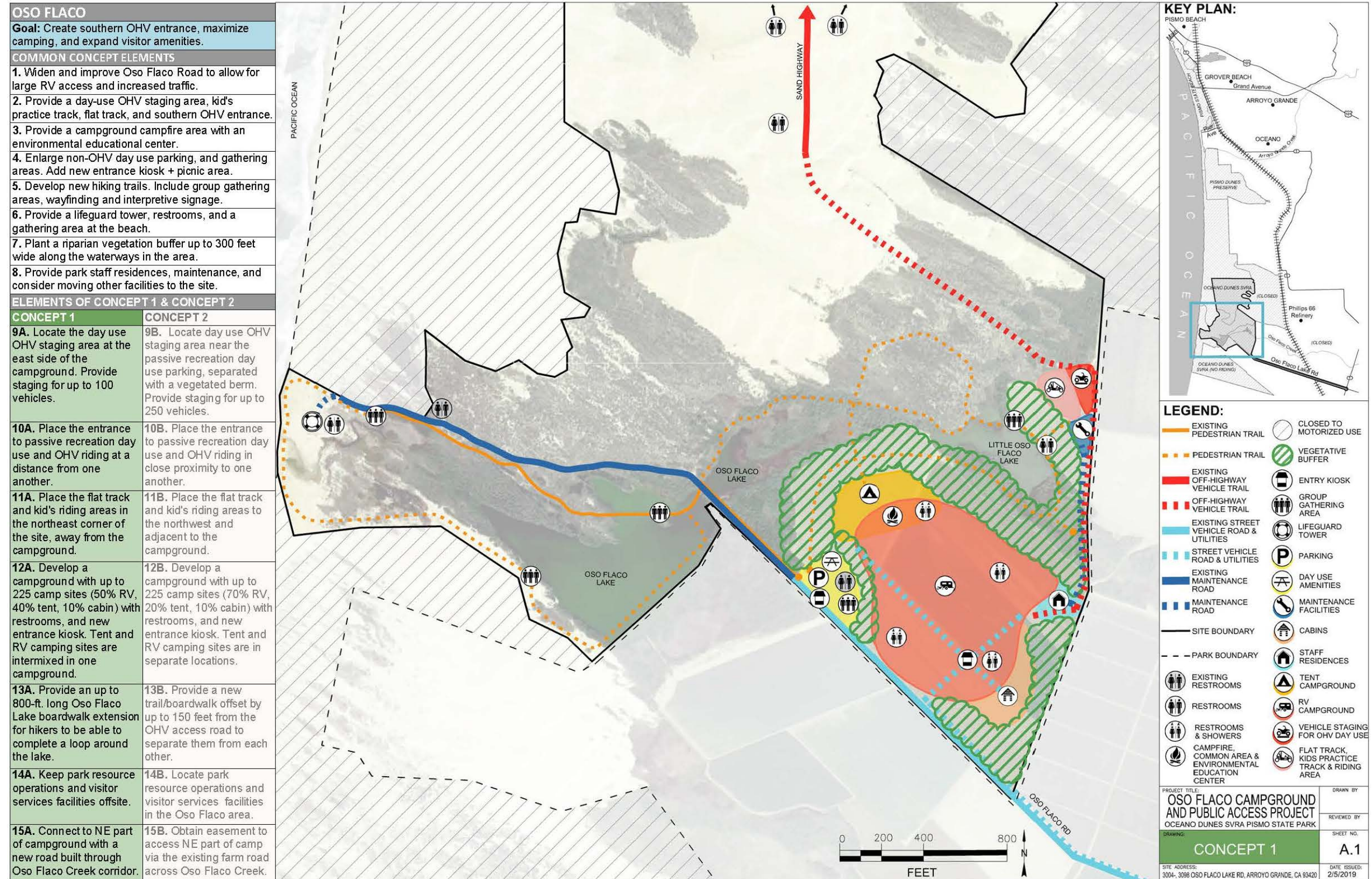


Exhibit 12 (State Parks PWP Oso Flaco Lake Campground and OHV Accessway Project)

CDP 4-82-300 (2019 ODSVRA Review)

Oso Flaco Campground and Public Access Project – Concept 2

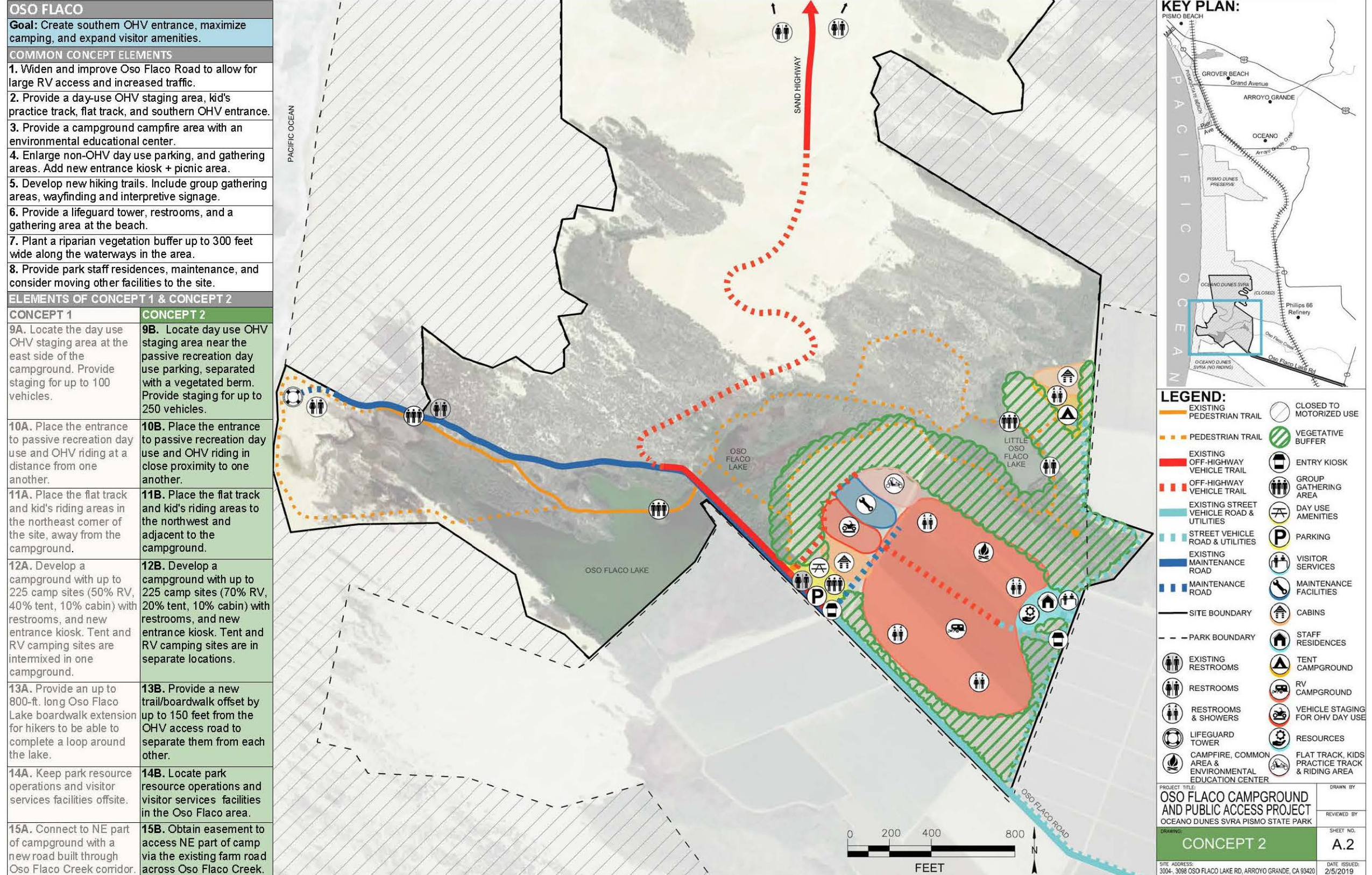


Exhibit 12 (State Parks PWP Oso Flaco Lake Campground and OHV Accessway Project)

CDP 4-82-300 (2019 ODSVRA Review)

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
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**July 12, 2019**

Lisa Mangat, Director
California Department of Parks and Recreation
P.O. Box 942896
Sacramento, CA 94296

Re: Oceano Dunes State Vehicular Recreation Area

Dear Ms. Mangat:

The California Coastal Commission wholeheartedly welcomes the effort by the California Department of Parks and Recreation (State Parks) to take what State Parks calls a “fresh look” at modifying operations at the Oceano Dunes State Vehicular Recreation Area (ODSVRA) in light of current realities. The Commission also agrees that the time is right to finally resolve the array of longstanding issues that have affected ODSVRA and surrounding areas for decades. State Parks has requested that the Coastal Commission put its thoughts and recommendations in writing to help better facilitate ongoing deliberations and discussions regarding the future of ODSVRA, including as your agency develops a Public Works Plan (PWP) for continuing operations at ODSVRA moving forward.

Since this PWP effort began in 2017, Dan Carl, the Coastal Commission’s Central Coast District Director, and Kevin Kahn, the District Supervisor, have been working closely with State Parks staff to identify and discuss all of the interrelated issues the PWP is intended to resolve. Among other matters, and at a foundational level, the PWP is intended to address ODSVRA compliance issues associated with the base coastal development permit (CDP), where the Commission originally authorized interim vehicle use parameters at the site back in the early 1980s (CDP 4-82-300 as amended). That base CDP also requires ongoing oversight by the Commission through annual reviews of the effectiveness of the interim operational parameters authorized by the CDP at managing and addressing coastal resource impacts, where the Commission can modify CDP conditions and requirements to ensure Coastal Act consistency with respect to ongoing operations at that time.

Commission staff have been providing your agency with feedback on the PWP in ongoing meetings and discussions, as well as in writing since this effort began (e.g., the recent June 13, 2018 letter on the Notice of Preparation for the PWP Environmental Impact Report). Commission staff also discussed these same issues in depth in a meeting with your main PWP staff in Santa Cruz on April 3, 2019, and briefly on the phone with you and other State Parks senior managers, as well as the Commission’s Executive Director, Jack Ainsworth, on May 16, 2019. The Executive Director and other Commission staff senior managers subsequently had an in-person meeting in Sacramento at your offices on June 3, 2019 with you and your senior management staff, including from the Off-Highway Motor Vehicle Recreation Division, wherein these same issues were again discussed in detail and in depth, including in terms of potential

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longer term operational and management changes at ODSVRA to ensure compliance with the CDP, the Coastal Act, and the LCP, and where the relationship of these issues to the Coastal Commission's annual ODSVRA base CDP review in July 2019 in San Luis Obispo were also discussed.

Commission staff's intent throughout these discussions has been to work collaboratively with State Parks to identify the many difficult coastal resource issues and constraints that affect ODSVRA and surrounding area, and to help provide guidance in the development of a comprehensive plan that fully addresses these issues and constraints. And the Coastal Commission as a body considered and deliberated with the same intent at the July 11, 2019 public hearing for the annual ODSVRA base CDP review in San Luis Obispo, and concluded by taking an action to make a series of changes to begin to address these issues and constraints through the CDP. The Commission also directed Commission staff to transmit this letter and attachment, under the signature of the chair, which outlines the issues and concerns at ODSVRA, as more fully discussed in the staff report for the CDP review, and provides direction to State Parks on alternatives to consider in the proposed PWP. Ultimately, the Coastal Commission concluded and decided that ODSVRA cannot continue to operate as it has while complying with the base CDP, the Coastal Act, and the LCP, and that it is time to explore alternatives to transition ODSVRA away from high-intensity off-highway vehicle (OHV) use to other forms of public access and recreation in order to meet Coastal Act requirements.

Among the key issues that the Coastal Commission has identified include that OHV use is contributing to ongoing air quality degradation, harming environmentally sensitive habitat, and leading to the deaths of endangered birds. In what is also an environmental justice issue, many members of the community of Oceano, one that is 50% Hispanic/Latino, have reported to Commission staff that they cannot use the beaches at ODSVRA for more traditional enjoyment of beach areas (such as walks, or just sitting on a towel and enjoying the shoreline) without safety concerns relating to OHV use. The lack of restaurants, hotels, or businesses (other than those oriented towards the OHV community) that would generally accompany a thriving California beach community are also lacking, according to Commission staff observations and reports from the residents. California Native American Tribes have also voiced concern regarding a lack of adequate consultation on the CDP and LCP processes, and have further observed that the site includes areas that are sacred ancestral lands.

In light of these critical coastal resource issues, the Coastal Commission urges State Parks to consider, for example, lower-impact alternatives such as beach camping (including potentially via some street-legal vehicles) and more traditional beach activities. The current PWP effort provides an appropriate vehicles to do so. In fact, the current setting and context provide an opportunity to more fully understand and evaluate other options consistent with both agencies' goals and legal constraints at this environmentally sensitive shoreline location.

Attached to this letter is an outline and detailed analysis of the significant coastal resource issues and constraints that affect ODSVRA operations as well as some Coastal Commission recommendations based on that analysis. The Coastal Commission believes that any resolution

of current ODSVRA issues consistent with the Coastal Act must respond to and address all of the concerns identified in this letter and attachment. The six overlapping issue areas and potential next steps are summarized here:

- **CDP 4-82-300 Compliance Issues.** CDP 4-82-300 approved only interim ODSVRA accessways and OHV use levels. That permit envisioned identifying and finalizing accessways and OHV use levels (the “carrying capacity”) after careful consideration of the environmental impacts on coastal resources and other constraints affecting ODSVRA operations. The Commission does not believe that the current level of OHV use is sustainable in a manner consistent with the Coastal Act and that therefore a much less intensive form of access and recreation must be considered moving forward.
- **Local Coastal Program (LCP) Compliance Issues.** The LCP designates the entire ODSVRA as an environmentally sensitive habitat area (ESHA). Only resource-dependent uses are allowed in ESHA, and OHV use is not a resource-dependent use. Therefore, OHV use cannot be found consistent with the LCP’s ESHA provisions. Any PWP (or other framework used to bring these issues to resolution) is required to be consistent with the LCP.
- **Air Quality Issues.** State Parks is under San Luis Obispo County Air Pollution Control District (APCD) order to reduce dust associated with ODSVRA operations due to what the district has deemed a “significant and ongoing public health threat” for the people living, working, and otherwise present inland of ODSVRA. State Parks has eliminated riding activities from about 100 acres of the ODSVRA and put in place other measures to reduce dust through its partnership with the APCD. However, current APCD assessments are that State Parks’ efforts to date are not resulting in adequate dust reduction. An estimated 500 acres of OHV riding area, or about *one-third of the current riding area* of 1,500 acres, may need to be permanently closed off to all riding activity and revegetated to help resolve public health issues and help meet air quality requirements. The Commission is broadly supportive of approving implementation measures required by APCD that will facilitate State Parks’ compliance with APCD orders to reduce dust associated with ODSVRA OHV operations.
- **Rare and Endangered Species and Habitat Issues.** ODSVRA itself 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 in California, and these dunes are also home to several special status species protected under both State and Federal law, including the respective Endangered Species Acts (ESA). These habitats and species – which qualify as ESHA under the Coastal Act both in consideration of their special status under the federal and State ESAs, but also independently of either of these statutes – are being significantly adversely impacted at ODSVRA, including a number of violations of the ESA associated with the take of threatened western snowy plovers and endangered California least terns due to vehicular activities every year at the ODSVRA. These activities are in violation of the State and Federal ESAs – and, for substantially the same reasons, are inconsistent with ESHA protections. Furthermore, every year the Technical Review Team’s Scientific Subcommittee

has strongly advised State Parks to make the current seasonal enclosure for these species (i.e., an area of approximately 300 acres, or roughly 20% of the current OHV riding area) permanent, at a minimum. These special status species/ESHA issues also dictate that a reduced level and intensity of OHV use is needed at the ODSVRA.

- **Environmental Justice and Tribal Issues.** Vehicle use at ODSVRA has led to disproportionate impacts on the residents of Oceano, and also Nipomo, who bear the burdens of the ODSVRA operations with essentially none of the benefits. Oceano is approximately 50% Hispanic/Latino with a Federal poverty rate of nearly 20%, and Nipomo is roughly 40% Hispanic/Latino with a Federal poverty rate of 10%. Pismo Beach by comparison has a population that is approximately 84% non-Hispanic white with a Federal poverty rate of 8.4%. (The overall poverty rate in the state of California is 13.3%.) In addition to the above described dust issues that residents have reported to Commission staff, including during site visits, that they must continually deal with relating to the OHV use, ODSVRA operations have limited economic development of Oceano's beachfront and community. Residents have also reported to Commission staff that OHV use has also prevented them from simply enjoying the adjacent six miles of sandy beaches and some 1,500 acres of coastal dunes through more traditional recreational beach uses such as walking or sitting on the beach. This presents an environmental justice problem, where OHV users gain the benefits of ODSVRA use, but the adjacent less affluent communities of color are forced to bear the problems and degradation associated with that use. Local tribal representatives (especially the Northern Chumash) also have informed Commission staff that they do not feel that they were adequately consulted in CDP and LCP processes for ODSVRA, do not support continued OHV use, and consider the ODSVRA to include areas that are sacred ancestral lands that should not be allowed to be used in these ways. The Commission is committed to both environmental justice and tribal consultation and justice with respect to implementation of the Coastal Act, including after expressly adopting policies for both within the past year. Equitable access for all requires a fundamental rethinking of how the ODSVRA can and should operate in the future to address these environmental justice and Native American cultural issues in a manner fully consistent with the Coastal Act.
- **PWP and PWP Proposed Project Issues.** The PWP was envisioned two and half years ago by State Parks as a way to address these ongoing and significant coastal resource issues and constraints. However, to date the Commission has not seen any draft PWP language that reflects an appropriate plan that can be found consistent with the LCP and Coastal Act. State Parks' recent PWP proposal to construct a new campground, staging, riding, and OHV entrance at Oso Flaco Lake presents what appear to be serious LCP inconsistencies related to agricultural conversion and ESHA degradation, at a minimum. Moreover, in place of circumscribing ODSVRA uses and activities in ways that resolve the issues and problems identified above, it actually would appear to *increase* OHV use and related coastal resource impacts. The Commission does not believe that the proposed Oso Flaco Lake project is an appropriate management alternative or approvable under the LCP, and it appears to indicate

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that State Parks is not yet pursuing the PWP in a manner that considers all of the coastal resource constraints and sensitive issues relevant here.

- **Next Steps.** The problems identified in this letter are significant and fundamental inconsistencies with the Coastal Act and suggest that it is time to start thinking about ways to transition the ODSVRA away from OHV use to other forms of public access and recreation. Low-impact car beach camping, for example, could 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. And there are undoubtedly other potential options for appropriately transitioning the Park. The Coastal Commission welcomes the opportunity to engage with you and the community to develop a new vision for ODSVRA and surrounding area for the future.

Please see the attachment for more details on the above issues and next steps for suggested resolution.

In closing, the Coastal Commission hopes that State Parks understands and accepts these comments as coming from a place of deep respect for State Parks and its mission, and a desire to work cooperatively. The Coastal Commission is committed to working with State Parks, the interested public, and the community to address all of these issues, and we look forward to continuing dialogue. If you have questions or would like to discuss further, please do not hesitate to contact Jack Ainsworth, Dan Carl, or Kevin Kahn.

Sincerely,

Dayna Bochco, Chair
California Coastal Commission

Attachment: ODSVRA Issues Discussion

cc: Dan Canfield, Deputy Director, California Department of Parks and Recreation OHMVR Division
James Newland, ODSVRA PWP Project Manager, California Department of Parks and Recreation
Kevin Pearce, District Superintendent, California Department of Parks and Recreation Oceano Dunes District
Trevor Keith, Director, San Luis Obispo County Planning and Building Department
Matt Janssen, Division Manager, San Luis Obispo County Planning and Building Department
Rita Neal, County Counsel, San Luis Obispo County
Gary Willey, Air Pollution Control Officer, San Luis Obispo County Air Pollution Control District
Kurt Karperos, Deputy Executive Officer, California Air Resources Board
Lena Chang, Senior Fish and Wildlife Biologist, United State Fish and Wildlife Service
Julie Vance, Central Coast Regional Manager, California Department of Fish and Wildlife

Attachment: ODSVRA Issues Discussion

CDP 4-82-300 Compliance Issues

The Coastal Commission's base CDP authorized certain operational and use parameters for OHV activity within the sensitive dune environment at ODSVRA 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 would otherwise not be allowed by the Coastal Act. The CDP's terms and conditions, as amended, set in motion a series of (ultimately failed) 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. As discussed herein, it is clear that current interim use levels are not sustainable.

Further, the Commission has never finalized the way in which access to ODSVRA is authorized by the CDP, and the current entrances (at West Grand Avenue and at Pier Avenue) are also only *interim* and only *temporarily authorized* under the CDP. The Commission and the base CDP always envisioned that alternative ODSVRA access locations would be evaluated and the best alternative authorized, including weighing how such access might best be provided in light of resource and other constraints. Although required to be completed back in the 1980s, these ODSVRA entrance issues have yet to be resolved and represent a nearly 40-year-old CDP compliance issue. In the meantime, the two interim entrances lead to a series of resource concerns and problems (e.g., lack of vehicle-free general public beach access, habitat impacts when vehicles cross Arroyo Grande Creek, impacts to the Oceano community more generally, etc.). Again, the current system of access into ODSVRA is not sustainable.

In addition, all of the other issues and constraints discussed separately below are also CDP 4-82-300 compliance issues, including as they go to these core questions of sustainable use under the CDP (e.g., issues associated with San Luis Obispo County Local Coastal Program (LCP) compliance, air quality requirements, Endangered Species Act (ESA) compliance, County ownership of some 584 acres of the OHV area in ODSVRA, California Native American tribal concerns (e.g., regarding ancestral lands and sacred sites), and environmental justice concerns related to the effect of ODSVRA 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. If the PWP intends to

“replace” the CDP, as Parks has indicated is an objective of the PWP effort, then *all* of these CDP issues must be able to be addressed and brought to resolution through it.

LCP Compliance Issues

One of the significant challenges facing ODSVRA is the fact that the LCP designates the *entire* ODSVRA as coastal dune ESHA,¹ and further designates the Park's wetland and lake areas as Sensitive Resource Areas (SRAs)² (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). Importantly, OHV use is not allowed in ESHA or in SRAs pursuant to the LCP, and thus, per the LCP, OHV use is not allowed at ODSVRA at all. At the same time, because the LCP also acknowledges that OHV use takes 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.³ While there is some evidence to suggest that the LCP intended for these potential anomalies to be resolved through establishing the above-described sustainable carrying capacity through CDP and LCP amendments,⁴ 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, ESHA and LCP jurisprudence has evolved 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.⁵ The

¹ The entire Park is considered ESHA under the LCP, including because it is mapped and designated as dune ESHA “Terrestrial Habitat” by the LCP's South County Coastal Area Plan.

² Including the Oso Flaco Lakes SRA, the Dune Lakes SRA, and the Black Lake Canyon SRA portions of the Park.

³ Any potential incongruities on these points, to the degree they exist, are definitely 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).

⁴ 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.

⁵ 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 (residential in that case) 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 those LCP policies might appear to 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.

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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. Given this reality, we have to conclude that continued OHV use at ODSVRA because of these Coastal Act and LCP ESHA/SRA inconsistencies is simply not approvable.

Further, about 40% of the total ODSVRA area currently allotted to OHV use, or almost 600 acres, is explicitly designated by the LCP as a buffer area that is "required for habitat protection."⁶ 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 (i.e., the roughly 584-acre La Grande property). Regarding the La Grande Tract specifically, three additional things should be mentioned 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 is not compatible with ongoing OHV use. In other words, the LCP does not include any potential incongruities with respect to the La Grande area, and the LCP clearly prohibits OHV use (and any other habitat-degrading use) in this area. And third, in past litigation in the early 2000s over the continued use of the La Grande area for OHV use,⁷ 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.⁸ La Grande property issues, including the fact that State Parks does not even own this acreage, are a significant issue and constraint to continued OHV use at ODSVRA.

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 you, stating: "[South County Coastal Area Plan] Figure 4 and Standard 9

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

⁷ Two lawsuits, which were ultimately consolidated (*Friends of Oceano Dunes v. County of San Luis Obispo* and *Sierra Club v. State of California*).

⁸ 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.

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 and receive approval for that Local Coastal Plan amendment prior to approving the PWP".⁹ The underlying issue is, however, that these types of fundamental LCP inconsistencies cannot be resolved through LCP amendments that allow continued OHV use due to core Coastal Act inconsistencies regarding ESHA protections. And, as indicated above, the existing LCP, as understood based on recent court decisions (e.g., the *McAllister* decision mentioned above), directs that OHV use is *not allowed* at ODSVRA under the Coastal Act and the LCP, so it creates a fundamental issue/constraint to State Parks' OHV operations moving forward.

Air Quality Issues

As well documented by the San Luis Obispo County Air Pollution Control District (APCD) and the California Air Resources Board (CARB), 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,¹⁰ including Oceano more broadly and along the Nipomo Mesa. The high particulate matter concentrations have resulted in what the APCD has deemed a "significant and ongoing public health threat" for the people living, working, and otherwise present inland of ODSVRA. 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*.¹¹ To address this significant public health crisis, APCD has required State Parks to comply with APCD Rule 1001 (adopted by the APCD in 2011), including the requirement for State Parks to implement appropriate dust control measures as part of a Particulate Matter Reduction Plan (PMRP) aimed at reducing particulate matter and meeting the Rule's dust reduction requirements. State Parks' initial efforts towards reducing dust were authorized by the Commission on an emergency basis starting in 2013, and subsequently by regular CDP in 2017 (CDP 3-12-050),¹² and applicable measures to be applied were last updated and approved by the Commission under that CDP in June of 2018.

Since that time, and based on APCD/CARB assessments that State Parks' efforts to date were not resulting in adequate dust reduction, State Parks recently entered into a Stipulated Order of

⁹ See San Luis Obispo County Counsel Rita Neal's July 17, 2018 letter to State Parks.

¹⁰ 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.

¹¹ Including most recently on April 11, 2019, April 21, 2019, and May 28, 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).

¹² The Commission has been sued by the Friends of Oceano Dunes four times since 2016 over the Commission's authorization of measures to protect inland communities from ODSVRA dust (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 litigation cases remain pending.

Abatement (SOA) (in 2018, as modified in 2019) with the APCD to identify and implement additional measures needed to reduce dust related to vehicular activity at ODSVRA. The latest modeling from State Parks' draft 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 riding activity and revegetated in order to help resolve public health issues and to help meet applicable air quality requirements. Again, this 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 that Rule 1001 was adopted in 2011 but the air quality problem remains, and 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 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.

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). 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.

Rare and Endangered Species and Habitat Issues

Despite ongoing OHV use, ODSVRA still 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 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 designates dune as ESHA under the Coastal Act, why the County and the Commission designated dunes as ESHA under this LCP when it was certified, and why the Commission has otherwise affirmed that designation regarding ODSVRA dunes and related habitats as ESHA in its past actions. Not only are the ODSVRA dunes themselves sensitive coastal resources, but this dune habitat is also *very* sensitive to degradation from OHV use and activities. In fact, many studies have looked at 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,¹³ 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.¹⁴ 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.^{15,16}

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 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.¹⁷ Similarly, in 2015 and 2016 letters,¹⁸ 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

¹³ 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).

¹⁴ 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).

¹⁵ 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.

¹⁶ 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 generally found that habitats for ESA-listed species are protected as ESHA, including the type of occupied listed species habitats that are present at ODSVRA.

¹⁷ See March 29, 2016 and December 22, 2016 USFWS letters.

¹⁸ See July 3, 2015 and March 3, 2016 CDFW letters.

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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.¹⁹

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.²⁰ 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, 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). 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 to Sue for Violations of Section 9 of the Federal Endangered Species Act by the Center for Biological Diversity.²¹

In attempting to address some of these ESA issues, State Parks maintains a seasonal habitat protection enclosure area for listed species in the southernmost seaward portion of the OHV

¹⁹ 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.

²⁰ 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. In any case, USFWS may need to 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.

²¹ 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. CBD indicates that they reserve the right to initiate the litigation should HCP efforts languish, and that they are considering their options on that front currently given the current context on this issue.

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 enclosure 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.²² 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/ESHA inconsistencies is another fundamental issue/constraint to State Parks' operations moving forward.

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

²² 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.

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access to the coast for all Californians essential, so is protecting coastal natural resources for future generations.

OHV uses at ODSVRA have led to disproportionate impacts on the residents of Oceano, who bear all of the burdens of the ODSVRA operations with essentially none of the benefits. The town of Oceano is the de facto “gateway” to ODSVRA, but OHV use has not only limited economic development of Oceano’s beachfront but it has also prevented any meaningful non-OHV use of the immediately adjacent six miles of the community’s sandy beaches and some 1,500 acres of coastal dunes. While other seaside California residents take for granted being able to picnic, stroll, or just sit on a beach towel, this is not an option for many in Oceano. 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 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. Similarly, year-round grading and sand removal at the ODSVRA entrance (i.e., State Parks apparently weekly removes sand from the Park’s entrance areas and trucks it to the local landfill) has the undesirable effect of potentially funneling higher tides into the town. This practice also represents a counterproductive coastal hazard adaptation strategy and activity where removal of this natural barrier to sea level rise actually diminishes one of the community’s most valuable resources for future resiliency and adaptation to rising seas. In fact, one of the more important dune ecosystem functions is the ability to serve as a buffer against rising seas and coastal hazards, and any activity that weakens or adversely impacts dunes also weakens this critical adaptation and protection function as well.

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%,²³ and a community that was designated as an “Opportunity Zone” by Governor Brown in 2018.²⁴ 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

²³ 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.

²⁴ Pursuant to the Tax Cuts and Jobs Act of 2017.

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.”²⁵ 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. This presents a classic environmental justice dilemma, wherein Park users gain the benefits of Park use, but adjacent and inland 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, 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.

In short, ODSVRA has been operating for many years without adequately addressing environmental justice and Native American tribal concerns, and these concerns need to be clearly and effectively taken into account as the future of ODSVRA operations is considered. 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 system that accounted for and reduced impacts to the community of Oceano. 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.

PWP and PWP Proposed Project Issues

As indicated at the outset of this letter, Commission staff and the Commission have discussed with State Parks and identified over the last couple of years the issues and constraints that need to be resolved through State Parks’ proposed PWP, as discussed above. To date, however, the Commission has yet to see any actual draft PWP language. Thus it is unclear to what degree these issues and problems are being considered and addressed, and thus whether the PWP can

²⁵ See July 17, 2018 letter from San Luis Obispo County Counsel Rita Neal to State Parks.

possibly be successful in that regard. Therefore, the Commission was surprised when the first substantive PWP document that was distributed publicly for review (in February 2019) simply identified a series of projects to be undertaken, but did not address the issues and constraints that Commission staff and the Commission has been discussing with State Parks staff for some time. In fact, the primary proposed project apparently being considered under the PWP does not really address these far ranging issues, problems and constraints, but instead would actually appear to exacerbate all of them – namely the proposed new campground, staging, riding, and OHV entrance at Oso Flaco Lake. 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 would appear to *increase* OHV use and related impacts associated with same. This project appears to be based on a premise of a ‘no net OHV loss of riding area’, which is a perspective that has long been espoused by OHV riding groups such as the Friends of Oceano Dunes, and a perspective articulated by Parks when Commission staff met with State Parks staff in early 2017 as Parks was kicking off their PWP effort. However, as Commission staff informed State Parks then, and as it has continued to inform State Parks since, ‘no net OHV loss’ is not only something the Commission cannot support as a foundational element of the PWP, but is actually both counterproductive to success and counterintuitive in terms of the very real issues and constraints affecting ODSVRA and its continued operations. In any event, the Commission does not believe that the proposed Oso Flaco Lake project is approvable, nor does it believe it shows that the PWP effort is moving in the right direction. On the contrary, it appears to be a fairly clear indication that the PWP is heading in direction that is not in keeping with the vision of a developing a contemporary plan that addresses the many difficult and serious issues and constraints presented by OHV riding in the dunes.

Next Steps

As indicated, the Commission has always viewed the PWP effort 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. 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 ODSVRA uses that appropriately respond to and respect ODSVRA’s special coastal setting. As indicated above, in the Commission’s view the issues and constraints that collectively affect ODSVRA make it clear that ODSVRA cannot continue to operate as it has in the past. 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. In short, in the Coastal Commission’s view ODSVRA operations that are fully consistent with on-the-ground realities, and with today’s laws and requirements, do *not* include OHV use.

As is, the entire ODSVRA 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. It is clear to the Commission that the constraints are rapidly closing in on OHV use, and it appears clear that it is happening in the very short term. 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,²⁶ but to do so is to suggest that State Parks should simply disregard the realities affecting ODSVRA, and to suggest that those realities are somehow inconsequential. In the Commission's view, they are not. It is not a single issue that is leading to this conclusion, rather it is the myriad of significant and overlapping issues, including those described in this letter and attachment, that are compounding and that together serve to constrain what can and should happen in ODSVRA. In the Commission's view what is appropriate in the coastal zone necessarily changes and evolves over time, including with advancing scientific knowledge and more appropriate, evolving regulatory requirements to protect 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 issues and constraints identified above. The Commission hopes that State Parks agrees, and looks forward to working with State Parks in the development of a contemporary ODSVRA plan for Oceano Dunes that recognizes current science, contemporary laws and regulations, and good public policy that is in the best interests of all people.

On that point, the Commission notes that 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 ODSVRA, and further notes that there

²⁶ On that point, it is important to note that that legislation (i.e., Public Resources Code (PRC) Section 5090 et seq) 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 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.

are those who would suggest that ODSVRA eliminate vehicular use in the dunes as one potential solution. It is clear to the Commission that that would be a fair conclusion based on the evidence. At the same time, it is also clear to the Commission that there may be other options that would make sense for both State Parks and the public, including a version of ODSVRA's future that retained some non-OHV vehicular use of ODSVRA, 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 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 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.

In any case, 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, including undoubtedly others different from these, and the Commission *very much* welcomes the opportunity to engage with State Parks 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.