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# F12a

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Staff: Kevin Kahn - SC  
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## STAFF REPORT CDP AMENDMENT

- Application Number:** 3-12-050-A3
- Applicant:** California Department of Parks and Recreation
- Project Location:** Various locations within Oceano Dunes in southern San Luis Obispo County.
- Originally Approved Project:** Implement multiple dust control projects as part of a five-year effort intended to help reduce dust emissions through multiple methods, including through dune restoration.
- Proposed Amendment:** Implement an additional 130 acres of permanent dust control mitigation via dune restoration (with 108 acres inside the off-highway vehicle riding and camping area and 22 acres outside of it) and authorize the installation of seasonal sand fencing near the West Grand Avenue and Pier Avenue Park entrances.
- Staff Recommendation:** Approval with Conditions
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### SUMMARY OF STAFF RECOMMENDATION

The California Department of Parks and Recreation operates a large roughly 5,000-acre State Park in southern San Luis Obispo County, typically referred to as Oceano Dunes (or "the Park"). The Park includes thousands of acres dedicated to various public recreational access activities (including off-highway vehicle (OHV) use, street-legal vehicle use, camping, and day-use beachgoing) and almost all of the Park has been deemed by the Commission to be an environmentally sensitive habitat area (ESHA), including in the San Luis Obispo County Local Coastal Program (LCP). The Park operates under a coastal development permit (CDP) that was initially approved by the Commission in 1982 (CDP 4-82-300) and last modified in March 2021. That CDP

specifies allowable public recreational access uses and intensities, as well as resource protection requirements. State Parks also implements dust abatement measures at the Park that are the subject of a different CDP, CDP 3-12-050. That CDP is the subject of this CDP amendment application whereby State Parks proposes to amend it to allow for permanent dust control mitigation to be applied to an additional 130 dune acres,<sup>1</sup> with 108 of those acres to be located inside the active off-highway vehicle riding and camping area and 22 acres to be located outside of it.<sup>2</sup> State Parks also proposes to authorize seasonal sand fencing (i.e., fencing meant to control the movement and buildup of sand) near the Park entrances at West Grand and Pier Avenues annually from March to July as a means to control natural sand drift from the beach to protect against sand driven problems at and near Park entrances.

By way of background, on September 14, 2017, the Commission originally approved CDP 3-12-050, which authorized State Parks to implement a series of measures aimed at controlling and minimizing particulate matter (or “dust”) emissions associated with the Park,<sup>3</sup> where subsequent potential proposed measures would be subject to further Commission authorization at a future time. Such emissions have been, and are currently, impairing air quality in downwind communities, including exceeding state and federal particulate matter emission standards in some cases. State Parks’ dust control efforts are meant to implement measures designed to comply with San Luis Obispo County Air Pollution Control District (APCD) air quality requirements, including APCD Rule 1001, which was adopted by APCD in 2011 and requires State Parks to minimize particulate matter emissions from Oceano Dunes. These measures are mostly aimed at stabilizing dune structure and restoring dune surface and vegetation properties in a manner that can help reduce potential dust emissions. The CDP has been amended twice, and to date allows State Parks to restore (i.e., permanent dust control mitigation, including by fencing off and planting these areas with native dune vegetation) some roughly 250 acres of dune ESHA (with 222.2 acres in areas previously used for vehicular, OHV, camping, and other non-habitat uses and 27 acres outside of such use areas); to annually deploy up to 40 acres of seasonal dust control measures (e.g., wind

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<sup>1</sup> ‘Permanent dust control mitigation’ consists of permanently eliminating any OHV, street-legal vehicle, camping, and any other non-habitat use in these areas, fencing them off, and restoring them via native dune plant revegetation.

<sup>2</sup> Where the Commission evaluates 108.8 and 22 acres, respectively as a means of easing implementation clarity given the CDP, as amended, currently allows 222.2 of the former, and allowing a slight buffer of 0.8 acres would provide a total of 331 acres without any fractional amounts.

<sup>3</sup> The Commission initially approved the CDP on September 14, 2017, and the Commission was sued over its approval by the Friends of Oceano Dunes. In January 2020, the San Luis Obispo County Superior Court remanded the project back to the Commission for additional review of the project’s coastal resource impacts, and the Commission approved the remanded CDP application on July 9, 2020. On that same day, the Commission approved CDP Amendment Number 3-12-050-A1, which amended the CDP by allowing for an additional 52.2 acres of permanent dust mitigation/dune restoration. And on April 15, 2021, the Commission approved CDP Amendment Number 3-12-050-A2, which authorized an additional 93 acres of permanent dust control mitigation (with 66 acres in the OHV riding and camping areas and 27 acres outside of these areas) in the dunes. Thus, all told, the CDP as amended twice allows for a total of roughly 250 acres of permanent dust control mitigation (222.2 acres in the OHV riding and camping areas and 27 acres outside of these areas).

fencing) during the windy season (i.e., roughly from March to September each year) within the OHV riding and camping area; and to install and operate monitoring equipment to evaluate dust abatement effectiveness. Because State Parks has exhausted the nearly 250 acres allowed for permanent dust control mitigation by CDP 3-12-050 as amended through and including CDP Amendment Number 3-12-050-A2, any additional such mitigation, such as what is proposed in this application, requires additional CDP authorization.

The Coastal Act states that air quality protection programs are the principal responsibility of local air pollution control districts (APCD in this case) and the California Air Resources Board (CARB), and requires the Commission to ensure that new development is consistent with these entities' air pollution control programs and requirements.<sup>4</sup> That said, while the Act states that the Commission cannot establish or modify air quality or emission standards, the Commission must still review development required to implement air pollution control programs and requirements to ensure that such development is consistent with Coastal Act requirements, including the protection of ESHA, public recreational access, and other coastal resources. In other words, there is no 'override' of these other Coastal Act requirements on the basis of air quality protection, and the Commission must still evaluate such proposed development for consistency with the Coastal Act.

In this case, State Parks' proposed project emanates from, is meant to implement, and is proposed pursuant to APCD's dust emission reduction programs, including APCD Rule 1001 and the APCD/State Parks Stipulated Order of Abatement. APCD reviewed State Parks currently proposed amendment projects for 2022 and provided written concurrence that State Parks proposals are consistent with applicable air quality requirements. Therefore, as with the originally approved dust control efforts under the original dust control CDP, the proposed amendment is consistent with Coastal Act Section 30253(c).

With respect to the proposed amendment's consistency with other Coastal Act requirements, similar to the original CDP (including as amended), the proposed amendment at its core is a series of projects that seek to stabilize dune structure. They are designed to protect and restore dune surface and vegetation properties to help reduce emissions, including in areas where OHV riding activities take place. These areas have been scientifically shown by air quality regulators to be highly emissive as a result of such activity. The project, as conditioned, will benefit dune habitat through dune restoration, and is thus inherently an allowed use within dune ESHA and is designed not to significantly disrupt habitat values, and in fact to enhance such values. Thus, the proposed amendment is consistent with Coastal Act habitat protection policies.

At the same time, similar to the originally approved CDP (including as amended), the proposed additional dust abatement and restoration areas will lead to a decrease of some nearly 109 acres currently used for OHV use and other forms of public recreation.

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<sup>4</sup> Coastal Act Sections 30414 and 30253(c).

Staff believes allowing for dust control in this area is appropriate and Coastal Act consistent because these areas are being removed from that public recreational use due to problems emanating from the use itself. In such cases, the Act is clear that its requirements for providing maximum public recreational access opportunities must be tempered with the need to “protect ... natural resource areas from overuse”, and explicitly requires that its public access provisions “be implemented in a manner that takes into account the need to regulate the time, place and manner of public access” depending on, among other things, “the capacity of the site to sustain use and at what level of intensity,” and the need to potentially limit access “depending on such factors as the fragility of the natural resources in the area” and for “the protection of fragile coastal resources.”<sup>5</sup>

In this case, it is appropriate to implement the proposed dust control measures at the dunes in question to stabilize their structure, restore their surface and vegetation properties, and address the problems emanating from such use, namely “requirements imposed by an air pollution control district”, here the APCD.<sup>6</sup> In addition, all of the proposed restoration is taking place in dune ESHA, and eliminating non-resource-dependent vehicular uses in ESHA (i.e., something the Coastal Act doesn’t allow in these dune ESHA areas) and restoring these areas as protected dune habitat (i.e., something the Coastal Act fundamentally requires and supports in these dune ESHA areas) is inherently and clearly consistent with the Coastal Act. And indeed, all of these issues (and others) led the Commission to discontinue OHV, vehicular recreation, and camping uses in ESHA at the Park in three years (by January 1, 2024) pursuant to the recent changes to CDP 4-82-300 enacted by the Commission on March 18, 2021, including in the areas affected by this proposed amendment. In short, the proposed changes are consistent with the Coastal Act’s public recreational access provisions that require unsustainable uses and use intensities to be restricted when they lead to resource and other problems. Here, those are air quality problems and APCD requirements.

Further, the proposed amendment aligns with the goals of the Commission’s Environmental Justice Policy and the Coastal Act’s environmental justice objectives by ensuring that Commission CDP actions do not unduly burden particular segments of the populace with adverse environmental outcomes, particularly on issues as important and fundamental to public health and welfare as air quality. Namely, the air quality problems associated with these uses at Oceano Dunes fall predominantly on the adjacent and downwind communities of Oceano and Nipomo, and on the Cities of Santa Maria and Guadalupe and the Santa Maria Valley more broadly in Santa Barbara County. These communities bear the brunt of Park air quality impacts, thereby raising prototypical environmental justice concerns regarding the benefits and burdens of environmental protection. The proposed amendment is designed to help ease the air quality burdens felt by these communities, and thus it is consistent with Commission and Coastal Act

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<sup>5</sup> Coastal Act Sections 30210, 30212, and 30214.

<sup>6</sup> Coastal Act Sections 30214 and 30253(c).

environmental justice objectives and requirements.

In conclusion, the proposed CDP amendment addresses a known and significant public health and air quality problem associated with the Park. Staff believes that the amended dust control project is consistent with the Coastal Act, and recommends that the Commission approve the CDP amendment. The motion to do so is found on page 7 below.

TABLE OF CONTENTS

1. MOTION AND RESOLUTION ..... 7

2. STANDARD CONDITIONS ..... 7

3. SPECIAL CONDITIONS ..... 8

4. FINDINGS AND DECLARATIONS ..... 10

    A. Project Location..... 10

    B. CDP 4-82-300 Background ..... 11

    C. Dust Control Project History ..... 11

    D. Standard of review..... 14

    E. Project Description ..... 14

    F. CDP Amendment Determination ..... 15

        1. Dust Emissions and Dune Habitat..... 15

        2. Public Access and Recreation..... 18

        3. Other Air Quality Observations..... 22

        4. Environmental Justice ..... 29

        5. Cumulative Impacts..... 32

        6. California Environmental Quality Act (CEQA) ..... 32

5. APPENDICES ..... 34

    A. Substantive File Documents..... 34

    B. Staff Contacts with Agencies and Groups ..... 34

**EXHIBITS**

- Exhibit 1: Oceano Dunes Location Maps and Site Photos
- Exhibit 2: State Parks' Proposed Amendment
- Exhibit 3: Oceano Dunes ESHA Memorandum

## 1. MOTION AND RESOLUTION

Staff recommends that the Commission, after a public hearing, **approve** a coastal development permit amendment for the proposed development. To implement this recommendation, staff recommends a **YES** vote on the following motion. Passage of this motion will result in approval of the CDP amendment as conditioned and adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

**Motion:** *I move that the Commission **approve** the proposed amendment to Coastal Development Permit Number 3-12-050 pursuant to the staff recommendation, and I recommend a **yes** vote.*

**Resolution to the Approve CDP Amendment:** *The Commission hereby approves Coastal Development Permit Amendment Number 3-12-050-A3 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

## 2. STANDARD CONDITIONS<sup>7</sup>

This permit is granted subject to the following standard conditions:

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

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<sup>7</sup> The standard conditions remain unchanged with this amendment.

- 5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### 3. SPECIAL CONDITIONS<sup>8</sup>

This permit is granted subject to the following special conditions:

- 1. Approved Project.** This CDP authorizes the California Department of Parks and Recreation (State Parks) to implement specified airborne particulate matter emission (“dust”) control and related monitoring measures at Oceano Dunes (the Park) in order to reduce and control dust generated at the Park consistent with the requirements of San Luis Obispo County Air Pollution Control District (APCD) and the California Air Resources Board (CARB) subject to these standard and special conditions, limited to all of the following:

**(a) Permanent Dust Control Measures.** Approved permanent dust control measures are limited to permanently discontinuing vehicular, OHV, camping and other non-habitat uses within ~~222.2~~ 331 acres of the vehicular, OHV, and camping areas at the Park, fencing off these areas to protect them, and planting native dune vegetation within the fenced off areas. Approved measures also allow permanent restoration with native dune vegetation of ~~27~~ 49 acres of dune areas outside of the vehicular, OHV, and camping use areas. See Exhibit 2 for demarcation of these authorized areas.

**(b) Seasonal Dust Control Measures.** Approved seasonal dust control measures are limited to temporarily installing wind fencing, porous roughness elements, soil stabilizers and straw bales, and/or perimeter fencing (around emissive ‘hot spots’) within up to 40 acres of the vehicular, OHV, and camping areas at the Park at any one time, generally during the windy season (generally between March through September) each year. This CDP also authorizes the installation of seasonal sand fencing near the West Grand Avenue and Pier Avenue entrances outside of dune areas generally between March and July (see Exhibit 2). Soil stabilizers and/or straw bales shall only be used if the Executive Director determines that the proposed soil stabilizers and/or straw bales can be installed in an amount, configuration, and composition that will not significantly disrupt dune habitat values (i.e., in this case meaning that there is no significant degradation of dune habitats and/or vegetation, and the use is kept to the minimum amount necessary to abate dust).

**(c) Other Dust Control Measures.** Other approved dust control measures are limited to installing ‘track out’ devices within the existing pavement areas (and not on beach sand) at the Pier Avenue and West Grand Avenue entrances to the Park, and installing native trees inland of the Park provided such native trees

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<sup>8</sup> Note: changes made to the special conditions as part of this amendment are shown in ~~strikethrough~~ and underline formats to note ~~deletions~~ and additions to the special conditions of CDP 3-12-050 through and including amendment 3-12-050-A3.

shall only be planted where the State Parks has provided property owner consent for same, and where the Executive Director determines that the proposed native trees will be planted in an amount, configuration, and species type that will not have significant adverse effects on coastal resources (i.e., in this case meaning that there is no obstruction of significant public coastal views, no significant degradation of dune habitats and/or vegetation, and no loss of prime agricultural lands or lands used for agricultural production).

- (d) Monitoring Measures.** Approved monitoring measures include the construction and operation of the S1 and Oso Flaco Meteorological and Air Quality Monitoring Stations, as well as other similar monitoring stations consistent with APCD or CARB requirements. See Exhibit 2 for the location of each authorized station.
- (e) Property Owner Consent.** Authority for State Parks to implement the approved dust control and monitoring measures at any given location is subject to the requirement that State Parks has landowner approval to undertake development on that property.
- (f) APCD and CARB Requirements.** Dust control and monitoring measures implemented under this CDP shall also be consistent with any applicable requirements of APCD or CARB related to dust control at the Park.

All requirements above shall be enforceable components of this CDP. The Permittee shall undertake development in accordance with this condition and the Approved Project described above. Minor adjustments to the above requirements which do not require a CDP amendment or new CDP (as determined by the Executive Director) may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources.

- 2. Dust Control Work Plan.** Prior to implementing any of the Approved Project elements, the Permittee shall submit, for Executive Director review and approval, two copies of a Dust Control Work Plan that clearly describes the specific dust control and monitoring measures to be implemented pursuant to it. The Dust Control Work Plan shall be submitted with evidence that APCD has reviewed the measures and consider them consistent with their requirements related to dust control at the Park. Each Dust Control Work Plan shall include a description of previously deployed measures, including monitoring data identifying effectiveness (including the effectiveness and success of dune revegetation) and any coastal resource impacts. The Executive Director has already reviewed and approved the specific dust control and monitoring measures to be implemented under CDP 3-12-050-A32, along with evidence from APCD that the measures are consistent with their requirements, and thus a Dust Control Work Plan is not required for those such measures.
- 3. Duration of Authorization.** This CDP authorizes the Approved Project for five years (i.e., until September 14, 2022). The Executive Director may extend the expiration ~~date~~ by additional five-year periods if the Permittee submits a written request to do

so prior to September 14, 2022 (and prior to the expiration date for any subsequent five-year extension approvals), where such request shall summarize the previous five year's efforts. The expiration date shall only be extended if there are not changed circumstances that the Executive Director determines would require the proposal to be heard as a new CDP or CDP amendment. Any CDP extension approved by the Executive Director shall be limited to the expiration date; new development, including any new dust control measures not authorized by the CDP, shall be processed as a new CDP or CDP amendment.

- 4. Indemnification by State Parks/Liability for Costs and Attorneys' Fees.** By acceptance of this CDP, State Parks agrees to reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys' fees (including (1) those charged by the Office of the Attorney General, and (2) any court costs and attorneys' fees that the Coastal Commission may be required by a court to pay) that the Coastal Commission incurs in connection with the defense of any action brought by a party other than State Parks against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this CDP. The Coastal Commission retains complete authority to conduct and direct the Commission's defense of any such action against the Coastal Commission.

#### 4. FINDINGS AND DECLARATIONS

##### **A. Project Location**

The California Department of Parks and Recreation operates a large State Park area in southern San Luis Obispo County in the 'five-cities area' south of the City of Pismo Beach and seaward of the City of Grover Beach and the community of Oceano (see Exhibit 1). The Park area includes all but the most northern portion of Pismo State Beach (constituting 20% of Park acreage); all of the Oceano Dunes State Vehicular Recreation Area (ODSVRA) (46%), the latter of which is a state-designated vehicular recreation area (SVRA); almost 1,000 acres of San Luis Obispo County property known as the La Grande property (including some 644 acres that is currently managed by State Parks as part of the off-highway vehicle (OHV) program) (20%); 658 acres of leased Phillips 66 property that acts as an undisturbed ESHA buffer area (14%); and some 34 acres owned by Union Oil (<1%) (see Exhibit 1). The Park extends along 8 miles of beach and shoreline (from the West Grand Avenue entrance in the north to the border with the Guadalupe-Nipomo Dunes National Wildlife Refuge in the south), and includes a dynamic natural sand dune system that extends some 2 miles inland, for a total of some 4,750 Park acres (for comparison, the Park is almost five times the size of Golden Gate Park in San Francisco). The Park provides for a mix of uses currently (e.g., activities associated with beach day use, equestrian use, hiking, etc.), including being the only State Park in California that allows for street-legal vehicles to drive on the beach, as well as to allow OHVs (e.g., dune buggies) and beach camping.

The Park is part of the much larger 18-mile-long Guadalupe-Nipomo Dunes Complex that extends from San Luis Obispo south into northern Santa Barbara County, which

has been identified as the largest such intact coastal dune ecosystem in the world,<sup>9</sup> and is a federally designated National Landmark. The City of Grover Beach forms the northern border of the Park. Inland and to the east are the Phillips 66 Refinery (formerly ConocoPhillips Refinery), the unincorporated community of Oceano, and private lands that consist mainly of dunes, coastal scrub, and agricultural fields. The southern border of the Park abuts the Guadalupe-Nipomo Dunes National Wildlife Refuge.

As the only California coastal State Park to allow vehicles to drive on dunes and beach sand, the Park is very popular for RV and car camping on the beach as part of the vehicular/OHV experience, with annual attendance estimated by State Parks at just less than 1.5 million visitors and annual vehicular use in the hundreds of thousands. However, these same sandy beach and dune resources that make the Park attractive for these vehicular uses also means that the Park contains significant and sensitive natural resources which have been designated and affirmed as environmentally sensitive habitat areas (ESHA) by the Coastal Commission, including in certification of the San Luis Obispo County Local Coastal Program (LCP). In fact, the Park is part of a significant and sensitive ecological system, the Guadalupe-Nipomo dunes complex, and the area includes critical habitat for the threatened western snowy plover, and supports other sensitive species including the endangered California least tern, endangered tidewater goby, and threatened steelhead trout. See site location maps and site photos in Exhibit 1.

## **B. CDP 4-82-300 Background**

Under the Coastal Act, the Park operates under a CDP first issued by the Coastal Commission in 1982 (CDP 4-82-300). That CDP identifies the basic parameters for Park operation, including where and what type of public recreational access is allowed (e.g., OHV riding, camping, street-legal vehicle use, day-use beachgoing activities, etc.), the maximum daily number of allowed OHV/street-legal vehicles and camping units, and requirements for habitat and sensitive species protection. The CDP is permissive as it relates to vehicular use, and it does not require vehicular use in any specific location, rather it simply identifies the types of areas where such use is and is not allowed, and sets maximum daily limits for it. That CDP has a long history, and was last modified on March 18, 2021, where the Commission acted to modify the CDP with respect to allowed uses and intensities of uses at Oceano Dunes by, among other things, requiring that OHV use, and all vehicular recreational use in ESHA, be discontinued within three years (i.e., by January 1, 2024), allowing for new camping areas to be opened on the beach between West Grand Avenue and Pier Avenue, and requiring enhanced habitat protection protocols. These changes were to address Coastal Act and LCP conformance issues, including in relation to ESHA and environmental and tribal justice.

## **C. Dust Control Project History**

### ***Oceano Dunes Dust***

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<sup>9</sup> Including by the Nature Conservancy, see: <https://www.nature.org/en-us/get-involved/how-to-help/places-we-protect/guadalupe-nipomo-dunes/>.

APCD, working with CARB, has found that dust emissions associated with operations at the Park have resulted in, and continue to result in, air quality problems inland of the Park, leading to exceedances of state and federal ambient air quality standards for particulate matter equal to or less than 10 and 2.5 microns in size (known as PM10 and PM2.5, respectively). The high particulate matter concentrations have resulted in what the APCD has deemed a “significant and ongoing public health threat” for the people living, working, visiting, or otherwise present inland of the Park, including particularly in the Nipomo Mesa area, but also extending into Santa Barbara County to the Cities of Guadalupe and Santa Maria as well as the Santa Maria Valley more broadly.<sup>10</sup> Federal and state air quality standards have been exceeded at APCD’s downwind monitoring stations. 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.<sup>11</sup>

Two APCD studies<sup>12</sup> have concluded that OHV activity is a major contributing factor to the high particulate matter levels recorded inland of the Park, including on the Nipomo Mesa and the further inland locations described above, and that the primary emissions causes are direct as well as indirect impacts associated with OHV use. These studies show that indirect OHV-related emission impacts stem from de-vegetation, dune structure destabilization, and destruction of the natural dune surface caused by OHV use, which increase the ability of the wind to entrain sand particles from the dunes. The studies also found that direct OHV-related emission impacts, meaning those impacts associated with fuel combustion exhaust or dust raised by vehicles moving over the sand, are a lesser, but not insignificant, contributors to the elevated PM10 levels. Based on the conclusions reached in the studies, and to address these air quality impacts, APCD adopted Rule 1001 in 2011.

### ***APCD Rule 1001***

APCD Rule 1001 requires State Parks to monitor PM10 and implement appropriate mitigation measures to meet state and federal air quality standards. Rule 1001 does not identify specific areas within the Park for dust mitigation, but rather was designed to be broad enough to allow State Parks to target the specific areas shown to be highly emissive via continuing study and research, and collaboration with APCD and CARB. Thus, among other things, Rule 1001 requires State Parks to implement appropriate dust control measures as part of a Particulate Matter Reduction Plan aimed at reducing particulate matter and meeting the Rule’s dust reduction requirements. The CDP authorizing State Parks’ initial dust control efforts pursuant to Rule 1001 requirements was originally approved by the Commission in 2017 under CDP 3-12-050.

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<sup>10</sup> And the Santa Barbara County Air Pollution Control District is also very concerned about such emissions as they affect areas subject to their authorities in Santa Barbara County.

<sup>11</sup> According to the United States Environmental Protection Agency’s Air Quality Index rating of combined particulate matter and ozone concentrations (airnow.gov website).

<sup>12</sup> APCD’s Phase 1 study (Nipomo Mesa Particulate Study – Phase 1) in 2007 and its Phase 2 study (South County Phase 2 Particulate Study – Phase 2) in 2010. The Phase 2 study was a comprehensive multi-stakeholder review that definitively attributed the particulate matter measured at downwind stations to the Park based on multiple lines of evidence.

### **CDP 3-12-050**

The dust control measures authorized in CDP 3-12-050 were generally aimed at stabilizing dune structure and restoring dune surface and vegetation properties in a manner that can help to reduce potential dust emissions. The CDP, which has been amended twice before, currently allows State Parks to restore nearly 250 acres of dune ESHA, including by fencing off and restoring these areas with native dune vegetation, with some 222 acres in the OHV riding and camping areas and 27 acres outside of these areas.<sup>13</sup> These activities are considered permanent dust control mitigation. The CDP also authorized State Parks to annually deploy up to 40 acres of seasonal dust control measures (e.g., wind fencing) during the windy season, which is roughly from March to September each year, within the OHV riding and camping area. And the CDP also authorized State Parks to install and operate monitoring equipment to evaluate dust abatement effectiveness. The CDP was structured to be effective for a 5-year period (where the current CDP expiration date is September 14, 2022), but it also allows the Executive Director to extend that expiration by additional five-year increments.<sup>14</sup> Finally, State Parks' dust control efforts are meant to be adaptive, acknowledging that the actual measures to be employed on the ground over time would be developed in conjunction with APCD and CARB, including to meet Rule 1001 compliance and objectives. Prior year's dust control measures, and their success or failure at reducing dust, inform future dust control measures. And any such measures coming out of that adaptive effort that are not authorized by this CDP, as described above, require their own environmental analysis and authorization. Such is the nature of this proposed CDP amendment.

### ***APCD/State Parks Stipulated Order of Abatement***

More recently, and based on APCD assessments that State Parks' efforts to date were not resulting in adequate dust reduction and air quality improvements, State Parks and APCD entered into a Stipulated Order of Abatement (SOA) (in 2018, as modified in 2019) to identify and implement additional measures needed to better reduce dust related to vehicular activity at the Park. The SOA also included the formation of a Scientific Advisory Group (SAG) to provide advice to State Parks and APCD on all technical air quality matters and recommendations related to the SOA, and to help in achieving Rule 1001 compliance. The SOA specified new dust reduction requirements that State Parks must meet within the four-year period between 2019 to 2023.<sup>15</sup> Namely, under the SOA, State Parks must ensure that activities at the Park: 1) don't

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<sup>13</sup> More precisely, the CDP currently allows State Parks to restore and make off-limits to recreational use 222.2 acres in the OHV riding and camping areas and 27 acres outside of these areas, or a total of 249.2 acres of such restoration.

<sup>14</sup> And to be clear, the Executive Director's authority as it regards such extension is limited to the expiration date, and it does not extend to modifying the CDP in any way, including modifications that might allow any new dust control measures. On the contrary, any new dust control measures, including new permanent dust control mitigation, that are not authorized by this CDP would require a CDP amendment or a new CDP, as appropriate. Special Condition 3 includes updated text to make this even more clear.

<sup>15</sup> And subject to potential extension past 2023 if necessary to achieve required dust reduction and related air quality improvement.

lead to dust that exceeds maximum allowed state and federal daily PM10 levels at downwind air monitors; and 2) do lead to daily baseline PM10 emissions at those monitors being reduced by at least 50% compared to 2013 levels. To meet these requirements, current APCD and State Parks air quality modeling suggests that between 500 and 800 acres (or between one-third to over one-half of the pre-dust control OHV riding area of roughly 1,500 acres), may need to be permanently closed off to OHV/camping activity and revegetated in order to get close to, but still not meet, the requirements of the SOA.<sup>16</sup>

#### **D. Standard of review**

The project area for the CDP spans multiple CDP jurisdictions, including those of the City of Grover Beach, San Luis Obispo County, and the Coastal Commission. Each entity agreed to consolidated CDP processing under Coastal Act Section 30601.3, and thus the standard of review for the CDP and any amendments to it is the Coastal Act, with local LCPs providing non-binding guidance.

#### **E. Project Description**

In conformance with Rule 1001 and the SOA, State Parks proposes to amend CDP 3-12-050 to allow for an additional 130 acres within which to apply permanent dust control mitigation, with 108 acres inside the current OHV riding and camping area and 22 acres outside of it (where the Commission evaluates 108.8 and 22 acres, respectively).<sup>17</sup> For the areas within the riding area, State Parks proposes to install perimeter fencing to delineate that it is off-limits to public recreational use, and then to either immediately plant native dune plants, or to apply interim measures (i.e., applying broken up straw to serve as ground cover for future plantings and/or wind fencing to retain sand) until adequate native dune plants are available to complete the restoration (which would occur no later than Spring 2023). For the 22 acres outside of the riding area, State Parks proposes to immediately plant native dune plants without any perimeter fencing. In addition, State Parks proposes to install seasonal sand fencing in three specific areas

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<sup>16</sup> It should also be noted that on October 7, 2021, the Superior Court of California for San Luis Obispo County issued an order ruling on a petition for a writ of mandate filed by the Friends of Oceano Dunes against the APCD (14CV-0514). In that order, the Court struck down a 2014 agreement between APCD and State Parks regarding certain aspects of Rule 1001 implementation. However, this agreement was subsequently superseded by the SOA. As such, the Court's order did not affect the validity of Rule 1001 or the SOA, with the Court observing that "there has been no showing that abatement and Rule 1001 may not be pursued simultaneously" (Order at 15). Since the Court's order does not affect the Rule or SOA, and since this dust control CDP (including the current CDP amendment application) is not in any way based on the now-nullified 2014 agreement between APCD and State Parks, the Court's October 7, 2021 Order does not affect the Commission's analysis and decision-making in this CDP amendment application.

<sup>17</sup> Because the base CDP has authorized 249.2 acres of such permanent dust control mitigation (222.2 in the current OHV riding and camping area and 27 acres outside of it), the amended CDP would therefore authorize a total of 379.2 acres of such mitigation. To provide a small buffer, and to provide better implementation clarity by using whole numbers, the Commission here evaluates an additional 130.8 acres of permanent dust control mitigation (108.8 acres in the current OHV riding and camping area and 22 acres outside of it) as part of this CDP amendment, which would lead to total dust control acreage authorized under the CDP as amended of 331 acres in the OHV riding and camping area and 49 acres outside of it, and a grand total of 380 such acres.

near the West Grand Avenue and Pier Avenue entrances and near Strand Way. The fencing would be deployed between March and July and would all be located on the back beach area seaward of dune areas (i.e., not installed in dune ESHA). The fencing would be installed in approximately 70 to 100-foot-long sections separated by roughly 30 feet between rows. See Exhibit 2 for a map that identifies the location and treatments proposed for each specific area, as well as the location of seasonal sand fencing.

## **F. CDP Amendment Determination**

### **1. Dust Emissions and Dune Habitat**

#### ***Applicable Provisions***

Coastal Act Section 30253 requires development to be consistent with requirements imposed by an air pollution control district or the State Air Resources Board:

**Section 30253.** *New development shall do all of the following: ... (c) Be consistent with requirements imposed by an air pollution control district or the State Air Resources Board as to each particular development.*

Coastal Act Section 30414 provides additional direction on how the Commission is to address air quality protection programs and requirements promulgated by the Air Resources Board and/or local air pollution control districts in its actions:

**Section 30414.** *(a) The State Air Resources Board and air pollution control districts established pursuant to state law and consistent with requirements of federal law are the principal public agencies responsible for the establishment of ambient air quality and emission standards and air pollution control programs. The provisions of this division do not authorize the commission or any local government to establish any ambient air quality standard or emission standard, air pollution control program or facility, or to modify any ambient air quality standard, emission standard, or air pollution control program or facility which has been established by the state board or by an air pollution control district. (b) Any provision of any certified local coastal program which establishes or modifies any ambient air quality standard, any emission standard, any air pollution control program or facility shall be inoperative. (c) The State Air Resources Board and any air pollution control district may recommend ways in which actions of the commission or any local government can complement or assist in the implementation of established air quality programs.*

Coastal Act Section 30240 also requires that ESHA be protected from any significant disruption of habitat values, and only allows uses that are dependent on the habitat resource in ESHA:

**Section 30240.** *(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas. (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade*

*those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

Thus, taken together, the Coastal Act states that air quality protection programs are principally the responsibility of local air pollution control districts (in this case APCD) and CARB, and requires that Commission actions on proposed development be consistent with APCD and CARB air pollution control programs and requirements. That being said, while the Act states that the Commission cannot establish or modify air quality or emission standards, the Commission must still review development required to implement such air pollution control programs and requirements to ensure the development is consistent with Coastal Act requirements, including the protection of ESHA and other coastal resources. In other words, there is no 'override' of these other Coastal Act requirements on the basis of air quality, and the Commission must still evaluate such proposed development for consistency with the Coastal Act, while not establishing or modifying air quality standards.

### ***Air Quality Requirements***

In terms of the proposed project's consistency with applicable air quality protection programs and requirements, APCD has reviewed State Parks' current proposed amendment projects and has concurred that they are consistent with applicable air quality requirements. Notably, as discussed previously, State Parks and APCD worked together to craft this set of projects consistent with the SOA, including because of their projected efficacy in reducing dust emissions from the Park. This point should not be understated, as the proposed measures are deemed critical by air quality scientists in addressing these important public health problems. As such, the proposed amendment is consistent with the requirements of Coastal Act Section 30253(c).

### ***ESHA Requirements***

The next analytic question is whether the proposed amendment is consistent with other Coastal Act requirements. Coastal Act Section 30240 protects ESHA and prohibits non-resource-dependent uses in such areas. All of the dune areas of the Park (and all of the Park south of Arroyo Grande Creek) constitute ESHA under the Coastal Act and the LCP, as discussed earlier. This is in part due to the dunes being part of a significant and sensitive ecological system, the Nipomo-Guadalupe dunes complex, much of which has been preserved exclusively for habitat protection purposes (see the Commission's Staff Ecologist memorandum articulating Oceano Dunes' ESHA designation from the March 18, 2021 CDP 4-82-300 review in Exhibit 3).<sup>18</sup> Thus, the project must constitute a use

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<sup>18</sup> As discussed in the ESHA memorandum: "Intact coastal dune ecosystems are extremely rare. Oceano Dunes is a component of one of the largest intact coastal dune ecosystems in the world and contains many rare habitats that support a great diversity of plants and animals, many of which are also rare. That is why Oceano Dunes is so unique and special, and a fundamental reason explaining why it is protected under the Coastal Act and the LCPs as ESHA. Experience tells us that maintaining, through conservation, intact natural processes and unfragmented ecosystems is orders of magnitude easier than restoring such ecosystems. At Oceano Dunes there is the opportunity to maintain, restore, and conserve this ecologically sensitive and biodiverse place now. If disruptive activities cease, this ecosystem will require only modest remediation and management. Oceano Dunes is a significant ESHA on the California coast that warrants the protection afforded to it under the Coastal Act and the LCPs."

that is dependent on the habitat resource itself to function, also called out as a “resource-dependent use”,<sup>19</sup> such as habitat restoration, to be consistent with Section 30240.<sup>20</sup>

Similar to the analysis for the initial dust control mitigations authorized under the CDP (including as amended), the current proposed amendment at its core seeks to stabilize dunes and their surfaces via vegetative plantings to reduce emissions. Thus, although the objective is air quality related, the proposed measures are themselves designed to better protect and preserve dune features, including via dune restoration, by stabilizing dune structure and restoring dune surface and vegetative properties. When the sand is left undisturbed, a combination of salt spray and particle sorting makes the sand surface more cohesive and less prone to wind erosion. Vegetation accustomed to the dune environment can also grow, particularly when supported by active revegetation efforts, and both the increased cohesion and the vegetation have been shown to significantly reduce dune emissivity. The proposed dust control measures prevent disturbance of sand dunes, help keep sand on-site, and restore habitat, with the overall effect of restoring the natural surface and vegetative properties of the sand dunes and reducing their emissivity. This will occur immediately in the 22 acres outside the active OHV riding and camping area, as this area would be planted shortly after approval. For the nearly 109 acres inside the OHV riding and camping area, State Parks indicates that it may take a little longer, but no more than two years, until native dune replanting can commence, due to funding and availability of plants. In the interim, State Parks intends to commence the restoration immediately via fencing these areas from use and applying interim measures (whether mulching to facilitate the future planting and/or wind fencing to help retain the sands in place to foster the future planting), which can be understood as part of the overall habitat restoration project, albeit over a longer length of time. Thus, the proposed development constitutes dune habitat restoration, and is therefore an allowable use within dune ESHA under Section 30240, meeting the first Section 30240 test.

The next requirement for Section 30240 consistency is that the allowable development (in this case habitat restoration through revegetation) must be undertaken in a manner that will not significantly disrupt dune ESHA habitat values. The proposed measures are mostly located in areas that are disturbed dune ESHA currently used for vehicular, OHV, camping, and other non-habitat purposes (i.e., 83% of the total proposed). Such measures will not only prevent the dunes from being further *disrupted* in these areas, but the dunes will also be *restored* with native dune vegetation consistent with project area native species. As to the 22 acres proposed to be restored outside the OHV riding and camping area (i.e., in an area of dune ESHA that is currently off-limits to such

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<sup>19</sup> The Commission has generally interpreted “resource-dependent use” to mean habitat restoration, nature/scientific study, and low-intensity interpretive public access and recreation pursuits (e.g., hiking trails and pathways).

<sup>20</sup> It should be noted that the proposed seasonal sand fencing is located outside of dune areas fronting West Grand Avenue, Pier Avenue, and Strand Way. This sandy beach space has been determined to not rise to the level of ESHA per the Commission’s ecologists (see the ESHA memorandum in Exhibit 3), and thus its seasonal placement does not raise Coastal Act Section 30240 concerns.

activities), this natural area was chosen because it requires some restoration assistance to facilitate dune cohesion and vegetation within the larger habitat, and the proposed active native dune plant revegetation effort there should help that area to better function as part of the overall habitat mosaic at the Park. As a result and overall, the project should lead to an increase in dune habitat value, enhancing the dune habitat resource as compared to the current condition, which does not significantly disrupt the habitat (rather it enhances it). As such, the proposed revegetation is consistent with the requirement to not significantly disrupt dune habitat.<sup>21</sup> Thus, the proposed development will not significantly disrupt ESHA habitat values, and meets the second Section 30240 test.

For these reasons, and with similar conditions as applied to the base CDP as amended here, as modified to address this project, the amended project can be found consistent with Coastal Act Section 30240.

### ***Conclusion***

State Parks' proposed dust abatement measures are meant to reduce dust emissions, but also will have the benefit of enhancing dune ESHA by restoring the natural dune surface and vegetative properties and stabilizing dune structure. In addition, all of the dunes at the Park are ESHA, and eliminating non-resource-dependent vehicular uses in ESHA (i.e., something the Coastal Act doesn't allow in these dune ESHA areas) and restoring these areas as protected dune habitat (i.e., something the Coastal Act fundamentally requires and supports in these dune ESHA areas) is inherently and clearly consistent with the Coastal Act. The proposed amendment, as conditioned, is consistent with Coastal Act Sections 30253(c) and 30240.

## **2. Public Access and Recreation**

### ***Applicable Provisions***

Coastal Act Sections 30210 through 30224 specifically protect public access and recreational opportunities. In particular:

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<sup>21</sup> In addition, none of the proposed restoration/revegetation is proposed within the foredunes or USFWS-designated critical habitat for western snowy plover. Some of State Parks' prior project proposals similar to this under this CDP, that resulted in areas being removed from OHV riding and camping and restored/revegetated, were located closer to, or in, these foredune and critical habitat areas. And in those cases, some claimed that the revegetation itself would lead to adverse impacts on dune habitats and species, and particularly on snowy plover, based on an allegation that the newly vegetated areas would better harbor predators and facilitate snowy plover predation. However, the Commission found at that time that the significance of this supposition was exaggerated for a variety of reasons, including in reliance on Commission Staff Ecologist Dr. Laurie Koteen's findings that the increased risk is small (including because bird species will not nest in or near areas they perceive to be dangerous to their chicks), that much of the remaining predation danger can be mitigated by State Parks' predator management protocols, and that the risk of adverse impacts to special-status species from dune vegetation is not significant in comparison to other impacts which threaten those species (i.e., street-legal vehicle and OHV use). And here, the proposed project treatment areas are well inland, and generally at the inland end of existing vegetated areas, where this claim is even more meritless. Thus, suggestions that the proposed project will lead to adverse impacts to listed species due to its potential to increase and facilitate predation on such species are unfounded.

**Section 30210.** *In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

**Section 30211.** *Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

**Section 30212(a).** *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources...*

**Section 30213.** *Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.*

**Section 30214.** *The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following: (1) Topographic and geologic site characteristics. (2) The capacity of the site to sustain use and at what level of intensity. (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses. ...*

**Section 30220.** *Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

**Section 30221.** *Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

**Section 30223.** *Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

While a fundamental tenet of the Coastal Act is to protect and provide for maximum public access and recreational opportunities along the coast (e.g., Sections 30210, 30211, 30221, and 30223), the Act also recognizes that this access must be provided in a manner that protects other coastal resources. For example, Section 30210 requires maximization of public access consistent with public safety needs and the need to protect natural resource areas from overuse. Section 30212(a) requires that public access be provided except where it is inconsistent with public safety and the protection

of fragile coastal resources. And finally, Section 30214 explicitly requires that the Coastal Act's public access provisions "be implemented in a manner that takes into account the need to regulate the time, place and manner of public access" depending on, among other things, "the capacity of the site to sustain use and at what level of intensity," and the need to potentially limit access "depending on such factors as the fragility of the natural resources in the area."

### **Analysis**

Most of the area proposed for permanent dust abatement measures in this amendment request (almost 109 acres, or 83% of the current proposed treatment area) is located in areas currently available and used for public recreational access opportunities. This area is used predominantly for OHV riding (and camping, albeit in a limited amount), but it is also available for low-intensity pursuits such as day-use hiking and birdwatching, albeit these, too, are pursued on a more limited basis given certain basic incompatibilities between such passive uses and more intensive vehicular recreation uses. State Parks and APCD indicate that these treatment areas were chosen in large part because they have been identified to date by APCD modelling as the areas that are the most emissive for dust, and thus that implementation of dust control measures here are expected to be most effective at reducing dust and enhancing air quality. If the proposed amendment project were to be implemented, these recreational areas would no longer be available for these recreational purposes, but rather would be permanently restored and put off limits to such uses. In other words, the proposed amendment project would decrease recreational access at the Park, and decrease available area for same by some nearly 109 acres.

The potential loss of public recreational areas along the coast is something that always needs to be considered carefully, particularly in terms of Coastal Act direction to maximize such opportunity as much as possible. At the same time, the Coastal Act also provides direction that resources being recreated upon must be capable of supporting such recreation without coastal resource degradation. Specifically, the Coastal Act directs that some recreational access is to be curtailed to "protect ... natural resource areas from overuse." Indeed, the Coastal Act explicitly requires that its public access provisions "be implemented in a manner that takes into account the need to regulate the time, place and manner of public access" depending on, among other things, "the capacity of the site to sustain use and at what level of intensity," and the need to potentially limit access "depending on such factors as the fragility of the natural resources in the area" and for "the protection of fragile coastal resources."<sup>22</sup>

Here, the Commission has found that OHV and vehicular recreation is degrading the dune resources on which it occurs, such as the nearly 109 acres in question here (see, for example, the Commission's March 18, 2021 action on CDP 4-82-300), and that these resources cannot handle that level of use and use intensity and still retain their inherent habitat values. In fact, OHV use and activity has been identified as one of the most destructive and disruptive activities that can take place in such dune and beach

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<sup>22</sup> Coastal Act Sections 30210, 30212, and 30214.

areas.<sup>23</sup> Based on these facts, it is appropriate to discontinue this recreational use in such areas, including to maintain conformance with Coastal Act public recreational access (and ESHA) provisions (as the Commission did in relation to such vehicular and OHV uses in beach and dune ESHA at the Park under CDP 4-82-300 on March 18, 2021, and all of the recreational areas proposed here for restoration were areas required to be closed to such recreation by the Commission in its March action). And while some have and may continue to argue that this is not consistent with the Coastal Act protections afforded public recreational access, that is incorrect, as the Coastal Act requires that recreational access be compatible with the protection of natural resources.

Further, the proposed area that would be retired from such recreational uses and restored under this amendment request is required be treated in this way to meet applicable air quality requirements promulgated by the APCD (consistent with Section 30253(c)) and to restore dune ESHA (consistent with Section 30240). And as described above, and perhaps most fundamentally, all of the areas being retired from vehicular, OHV, and camping use under the proposed project are ESHA, where OHV/vehicular use is not a resource-dependent use and is therefore not allowable in ESHA. Thus, eliminating non-resource-dependent vehicular uses in ESHA (i.e., something the Coastal Act doesn't allow in these dune ESHA areas) and restoring these areas as protected dune habitat (i.e., something the Coastal Act fundamentally requires and supports in these dune ESHA areas) is inherently and clearly consistent with the Coastal Act. And it should be noted that these and other supporting rationales formed a primary basis for the changes to CDP 4-82-300 that were adopted by the Commission on March 18, 2021, and that require that OHV use at the Park, and vehicular recreation in ESHA overall, be eliminated by January 1, 2024, including the areas covered by this CDP amendment request.

It should also be noted that while the amendment here proposes permanent dust control and dune revegetation/restoration on nearly 131 acres of dune (again, nearly 109 acres in the OHV riding area and 22 acres outside of it), as mentioned previously, APCD (and the SAG) indicate that more acreage is likely to be needed to meet applicable air quality requirements, perhaps several hundred more acres. It is therefore foreseeable that State Parks is likely to pursue additional dust control measures in the future, potentially subject to another CDP amendment application if they involve more permanent dust control and dune revegetation/restoration. However, APCD and State Parks have specifically intended the dust control measures to be developed as part of an adaptive management process in which they assess, with the help of the SAG and the use of the most up-to-date air quality science and modeling, the source of significant emissions and how best to address them. At this time, APCD and State Parks thus do not know what those future measures would consist of, where they would be located, and how

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<sup>23</sup> 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); and 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), as well as past Commission Staff Ecologist memorandums on this subject, including for the March 18, 2021 CDP 4-82-300 review (see Exhibit 3).

many acres would be affected. Accordingly, the Commission is unable to assess such an uncertain future potential project(s) at this time, but it retains its authority to address Coastal Act consistency of any future dust control measures at the time that they are presented to it, regardless of the decision it makes on the dust control measures before it today. In sum, the Commission's analysis of proposed future dust control measures is not prejudiced by its review of such measures today.<sup>24</sup>

In conclusion, and for all the reasons articulated above, the proposed amendment project is consistent with the public access and recreation policies of the Coastal Act.

### **3. Other Air Quality Observations**

#### ***Natural versus Anthropogenic Dust Causation/Responses***

Some have argued that the elevated dust emissions at the Park are due solely to natural causes, or at the least not the result of vehicular/OHV use. This theory is based on the fact that the wind that blows onshore, across the Park, and to inland areas would be blowing whether there were vehicular/OHV use or not, and thus that it is not vehicles/OHVs that are to blame for the aforementioned dust problems. It is true that the Park is in a natural high wind environment, which is at least partly why the dunes here formed in the first place. But this theory does not comport with the findings of the rigorous scientific analyses that have been conducted in this area. CARB and APCD have extensively studied air quality in this area, and they have concluded, based on their studies, that the primary reason for excessive dust emissions is that the dune geomorphology and surface properties of the dune sand has been damaged by vehicular/OHV activity. Due to continual disturbance by OHVs, the sand in much of the riding area has been ground into finer and finer particles. Ordinarily, following such a disturbance, a series of processes that creates a loose cohesion among surface sand particles takes place, which makes the sand grains less easily dislodged by wind, and creates opportunities for vegetation to take root. However, at the Park, because the dunes are continually disturbed by OHVs, this cohesion process is continually interrupted, and the sand remains more subject to entrainment by wind. Therefore, when the wind does blow, it blows across a sandy landscape that is not well cemented together and it leads to saltation.<sup>25</sup> This ejects sand particles into the passing air mass, resulting in sometimes very large dust plumes that can deposit dust up to 12 miles inland to the City of Santa Maria.

As documented over a decade ago in APCD's 2007 report, and confirmed in several succeeding investigations on the causes and sources of dust, the main reason for the

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<sup>24</sup> It should also be noted that the Commission's approval here limits State Parks' permanent dust control efforts in total under the CDP as amended to 331 acres in the OHV/camping area and 49 acres outside of it, per Special Condition 1(a). That condition is a limit, and any measures in exceedance would require additional authorization. In addition, some have argued that Special Condition 1(f) includes language that overrides Special Condition 1(a)'s acreage limit. That is not accurate, as both conditions are meant to work together, with 1(a) specifying a maximum limit, and 1(f) ensuring that that acreage is addressed "consistent with any applicable requirements of APCD or CARB related to dust control at the Park."

<sup>25</sup> Saltation is the process in which sand particles are mobilized by passing wind, causing them to skip along the surface and inject other sand particles into the air stream.

dust problem is that the dunes are damaged by vehicular/OHV uses and are not allowed to heal in a way that would naturally limit dust.<sup>26</sup> Conclusive evidence of this phenomena was documented in the APCD's 2010 South County Phase 2 Particulate Study, which found, among other things, that the dust in downwind Nipomo emanated from the open sand sheets of the coast, that open sand sheets used for OHV use emitted significantly more dust than undisturbed sand sheets, and that vegetated dunes, including at Oso Flaco Lake, did not emit wind-blown particles. As APCD states:<sup>27</sup>

*The primary source of high PM levels measured on the Nipomo Mesa is the open sand sheets in the dune areas of the coast.*

*The open sand sheets subject to OHV activity on the SVRA emit significantly greater amounts of particulates than the undisturbed sand sheets at the study control sites under the same wind conditions.*

*Vegetated dune areas do not emit wind blown particles; the control site dunes have significantly higher vegetation coverage than is present at the SVRA.*

*The major findings resulting from detailed analysis of the diverse and comprehensive data sets generated during the Phase 1 and Phase 2 South County PM Studies clearly lead to a definitive conclusion: OHV activity in the SVRA is a major contributing factor to the high PM concentrations observed on the Nipomo Mesa.*

As a result, State Parks and APCD have targeted their dust abatement efforts at restoring the dune landform by ceasing riding activity and planting native dune vegetation, especially in the foredune areas (nearest the beach and ocean) that have been identified as being the most emissive and the highest source of dust,<sup>28</sup> and which correspond with the most frequently used OHV riding areas. The evidence shows that these efforts are making a difference. Notably, APCD has found that the number of exceedances of state PM10 emission thresholds were lower in the first half of 2020 (when the Park was closed to vehicular use due to Covid-19 precautions) than those that occurred over the same time period in four out of the previous five years at the primary air quality monitor that is directly downwind from the locations of dust mitigation measures. Further, this has occurred despite the fact that the first half of 2020 was an exceptionally windy year—the windiest of the past six years. Moreover, 2020 saw the fewest number of hours with PM10 concentrations greater than 300 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ , a metric for the severity of adverse air quality). Thus, 2020 saw a reduction in both the frequency and severity of dust emissions; a reduction that is

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<sup>26</sup> And this is consistent with State Parks findings at the Ten Mile Dunes in Mendocino County, where OHV use was subsequently abandoned, including for this reason.

<sup>27</sup> APCD's 2010 South County Phase 2 Particulate Study, page iii.

<sup>28</sup> The open sand sheets within and adjacent to the County's La Grande property, where OHV use and camping is currently allowed, have been shown to be the most emissive, whereas vegetated dunes further south in the Oso Flaco Area, where OHV is not allowed, are much less emissive.

attributable to the mitigation measures that were put in place prior to 2020 (i.e., replacing OHV/vehicular use with dune vegetation). As APCD stated in 2020: "...We have seen real, significant improvements in air quality, especially at CDF, and especially after taking meteorology (wind) into account."<sup>29</sup>

Many supporters of OHV use have suggested that the fact that there was dust at all during 2020, at times when the Park was closed to vehicles and OHVs due to Covid-19 precautions, is indication that the dust is not associated with vehicular/OHV use. This argument ignores two facts. The first is that air quality improved significantly in 2020. The second is that dune degradation is at the heart of the dust issue, and it will take time for the dunes to restore themselves after vehicular/riding activity has stopped. In fact, it can take years for dunes to heal in way that they no longer contribute to dust problems. As stated by the SAG in response to this observation:

*Decades of OHV activity have fundamentally altered the natural beach-dune landscape, making the dunes significantly more susceptible to PM emissions than they would be in a natural state. The SAG does not expect a few weeks or months of temporary OHV restrictions to substantially alter the balance of human versus natural contributions to PM emissions at ODSVRA....This is why revegetation is the key mitigation measure being used on the ODSVRA....By 'jump starting' areas with seed, seedlings, and in some cases ground cover, air quality benefits can be realized much more quickly.*

Clearly, the SAG has found dune revegetation efforts to be a critical component to dust mitigation. And the proposed dust mitigations—retiring certain areas from vehicular, OHV and camping use and permanently restoring them to vegetated dunes—is both needed and working to reduce downwind dust emissions, which is why these measures have been formulated by the APCD and its air quality scientists, agreed to and proposed by State Parks, and approved by the Commission.

In short, while it is true that there will be some wind-borne dust as a result of the natural landforms and natural processes that have long affected the Park, it is not true that the same level of dust, and associated significant air quality and public health problems engendered by it, would occur regardless of whether there were vehicular and OHV activities. On the contrary, APCD has found vehicular/OHV activity and its resultant impacts to the dune landscape are the leading cause of such emissions. And State Parks and APCD have decided to address that fact through retiring strategic areas from such activities and restoring these areas as a means of recreating the natural and vegetated dune landform. The science points to the need to abate the dust by allowing the dunes to be restored, and restoring the dunes can only occur when they are not constantly being demolished by vehicular/OHV use.

### ***Wind fencing***

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<sup>29</sup> "Frequently Asked Questions: Air Quality and the Temporary Closure of Oceano Dunes," June 30, 2020. Available online at: <https://storage.googleapis.com/slocleanair-org/images/cms/upload/files/June2020FAQ-42.pdf>.

Some OHV enthusiasts have argued that a large fence could be installed inland of the riding area and that this fence could abate any dust without retiring currently active OHV areas and restoring such areas. They have suggested placing a tall wind fence (some 30 feet tall) inland of the riding area to address dust concerns, and point to a proposal by WeatherSolve Structures (WSS) as a solution. Three main things should be noted regarding the idea of addressing dust and air quality impacts with such a fence. First, as described above, air quality regulators have determined that dune restoration is the most effective means to address dust and air quality problems emanating from the Park. Dune restoration in ESHA, especially restoration that removes an activity that is (a) not allowed in such ESHA in the first place, and (b) significantly disrupting the dune habitat, also meets Coastal Act and LCP ESHA protection policies.

Second, the Commission is not the entity tasked with evaluating and identifying the proper air quality requirements to address public health concerns. In fact, such requirements are explicitly the purview of CARB and local APCDs (see Coastal Act Section 30414), and the Commission is prohibited from coming up with its own air pollution control program. The Commission, or local governments with a certified LCP, is required to authorize any development associated with pollution control programs required by CARB or APCD, but the Commission is not in a position to question the requirements themselves, unless they are inconsistent with the Coastal Act or LCP.

Third, the SAG stated as follows in July 2020 as regards the fence concept:

***The opinion of the SAG is that the proposed wind fence would be completely ineffective at reducing airborne particulate dust generated within ODSVRA.*** As shown on p. 37 and p. 39 of the WSS proposal, the wind fence would be installed on the downwind edge of the ODSVRA. Thus, the vast majority of emissive surfaces within ODSVRA would experience no change in surface wind speed or shearing stress and, thus, no change in particulate dust emissions. Fundamentally, solving a dust emissions problem with a wind fence or other sheltering barrier (e.g., hedgerows, tree lines) requires that the barrier be placed upwind of the emissive surface. Wind fences are typically not designed to 'catch' emitted particulates from the incoming wind. Because emitted particulate dust is quickly lofted airborne far above the ground, only a negligible fraction of upwind airborne dust would be caught and settled out by the proposed downwind porous wind fence, particularly given the size of the holes in the mesh (74 times greater than a PM10 particle), its limited height of only 30 feet, and the complexity of the dune terrain. Though it is possible that some dust emission would be inhibited immediately downwind of the proposed wind fence, the affected area downwind of the fence (pg. 37) has lower dust emissions relative to the majority of the ODSVRA land surface upwind of the proposed fence. Theoretically, the wind fence could be situated close to the shoreline to shelter more emissive regions but, logistical considerations aside, such an installation would shelter only a narrow swath of the overall ODSVRA from potential dust emissions. Distances to the end of the sand sheet from near the shoreline can exceed 2.8 km, which would leave most of the sand sheet area unprotected by the downwind shelter offered by a single length of the WeatherSolve fence.

*Similar to the sand fence arrays deployed to reduce coarser sand transport (saltation), multiple lines of wind fencing would need to be emplaced across vast expanses of the dune surfaces for this technology to become effective. The costs to install and maintain such an array of wind fencing would be immense and probably prohibitive, given the costs presented in the proposal. **An additional and very important limitation of this type of fence, as described in the proposal, is that it is designed to release the mesh during high wind events (pg. 4), which is when dust emissions on the dunes are typically of greatest concern, further reducing any effectiveness in modulating sand transport and dust emissions.***

*Therefore, it is the recommendation of the SAG that Parks reject the wind fence proposal submitted by WeatherSolve Structures. This recommendation is not an outright dismissal of the effectiveness of wind fences that, if properly deployed, can be effective at mitigating emissions from concentrated dust sources. Instead, **our recommendation is based on the recognition that the use of such a wind fence, as proposed, will be ineffective for addressing the nature and geography of diffuse particulate dust emissions experienced within the ODSVRA.** (emphasis added)*

### ***Inland development***

Some also argue that the reason that there are inland public health problems is because development was sited and installed inland of the Park in a way that didn't adequately take into account such dust issues. For example, many suggest that the Trilogy residential development (that is located outside the coastal zone and about three miles inland of the Park) is representative of this phenomenon. They claim that the development resulted in trees being removed and then homes and a golf course installed in their place, leading to decreased dust protection because there are fewer barriers to 'catch' dust and more people in harm's way. The argument is essentially that because the dust preceded the people, those who live on the Nipomo Mesa should not complain about the dust.

However, irrespective of whether it was a good or bad idea to add housing units inland of the Park (and outside of the coastal zone), those units exist and were lawfully authorized by the County through its land use planning and decision-making process. And in California, everyone is entitled to clean air. To suggest otherwise is to suggest that people located inland of the Park don't deserve and shouldn't expect clean air, and to suggest that the governmental agencies that regulate air quality shouldn't try to reduce/eliminate air pollution that leads to public health problems. The argument is essentially that we should create areas that are off limits to residential development so that air pollution can continue to exist in those areas without leading to public health problems. But the APCD has an obligation to regulate air pollution, and it is fulfilling that obligation by addressing what it calls a "significant and ongoing public health threat" caused by dust emissions from Oceano Dunes.

### ***Scripps studies***

Some OHV enthusiasts also point to results received in late 2020 from an ongoing study commissioned by and paid for by State Parks and undertaken by researchers at the Scripps Institution of Oceanography at the University of California at San Diego.<sup>30</sup> Among other findings, those results posit that the dust problems that are attributed by APCD and CARB to the degradation of the dunes by vehicles/OHVs are actually better attributed to natural phenomena. In response, APCD states:

***The most recent preliminary Scripps Report was not designed to measure PM10, the pollutant being regulated, and it used unproven measurement methods. The preliminary report does not alter the understanding of the dust issue on the Nipomo Mesa or undermine the previous studies that were conducted over the last decade by APCD, State Parks, DRI, and other independent researchers.***

*The Oceano Dunes dust issue is driven by the dozens of exceedances of the PM10 standard that occur each year downwind of the ODSVRA, yet the Scripps study measured PM2.5, the standards for which are only rarely exceeded. Therefore, even if their samples had been collected using standard methods, the results would still only be of limited value.*

*Scripps collected their PM2.5 samples using a novel sampler, which is not EPA-approved for PM2.5 sampling and to our knowledge has never been tested; in fact, we are unaware of any other PM2.5 studies using this method. Scripps's measurements are systematically lower than and correlate poorly with our measurements, which were made using industry-standard BAM monitors at the same site (the District's CDF monitoring station downwind of the ODSVRA). Scripps argues this discrepancy is due to water evaporating from their PM2.5 filters prior to them being weighed by the EPA-approved gravimetric method. The District finds this explanation unlikely, since samples collected and weighed according to the full EPA-approved method generally show good correlation with collocated BAM measurements. The major difference between what Scripps did and the full EPA method is Scripps's sampling apparatus; their filter analysis was reportedly done according to the EPA protocol. Thus, the discrepancy between their PM2.5 measurements and the District's is likely due to their sampling method. This may also explain why the Scripps speciation results are different from previous speciation studies of Oceano Dunes dust.*

*The District also identified several inconsistencies in the figures in the report. For example, from one figure to the next, the same samples are often depicted as starting at different times. One figure shows concentrations from the District's PM2.5BAM instrument, but some of the values depicted do not appear to match the values we measured.*

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<sup>30</sup> L. Russell (2020). "UCSD Supplemental Report 2020: Preliminary Results from May 2020 Aerosol Measurements," September 20, 2020.

*Finally, the report fails to recognize the science of how OHV activity contributes to the dust issue, stating: “The association of high PM10 and PM2.5 with high wind conditions, even when recreational vehicles were not allowed at Oceano Dunes, indicates that dune-derived mineral dust is more likely to be caused by natural forces (i.e. wind) rather than human activities,” and “[T]he high dust concentrations measured on high wind days in and downwind of Oceano Dunes are likely dominated by natural saltation processes associated with the indigenous geomorphological dune structure.” ...*

*As the District has stated elsewhere, “it is not the dust kicked up by OHV activity (i.e. ‘rooster tails’) that causes poor air quality downwind, nor is it their tailpipe emissions. Rather, it is the secondary effects to vegetation and dune shapes that leads to greater wind erosion and more dust when the wind blows.” And as the SAG noted in a letter shortly after the ODSVRA was closed to OHV activity, “decades of OHV activity have fundamentally altered the natural beach-dune landscape, making the dunes significantly more susceptible to PM emissions than they would be in a natural state. The SAG does not expect a few weeks or months of temporary OHV restrictions to substantially alter the balance of human versus natural contributions to PM emissions at ODSVRA.” ...*

*The author appears to misunderstand how OHV activity contributes to the high PM10 levels measured downwind of the ODSVRA. As the District has stated elsewhere, “it is not the dust kicked up by OHV activity (i.e. ‘rooster tails’) that causes poor air quality downwind, nor is it their tailpipe emissions. Rather, it is the secondary effects to vegetation and dune shapes that leads to greater wind erosion and more dust when the wind blows. It is true that without wind, there would be no significant dust, but changes to key vegetation areas and dune structures caused by OHVs result in more sand movement and more dust emissions when the wind blows.”*

*The ODSVRA closed to OHV activity on March 27th, just one month before Scripps began sampling, so it [is] unlikely that surface emissivity during their study differed significantly from when OHV activity is allowed. As the SAG noted in a letter dated April 5th, “**decades of OHV activity have fundamentally altered the natural beach-dune landscape, making the dunes significantly more susceptible to PM emissions than they would be in a natural state. The SAG does not expect a few weeks or months of temporary OHV restrictions to substantially alter the balance of human versus natural contributions to PM emissions at ODSVRA.**”*

*Additionally, if—as the Scripps Report seems to suggest—the dust downwind of the ODSVRA is simply a natural phenomenon unrelated to the long history of OHV activity, this does not explain the observed spatial pattern of PM10 in the region. Specifically, the PM10 levels observed downwind of the riding area of the ODSVRA (i.e. at the CDF and Mesa 2 monitoring stations) are systematically higher than the levels observed downwind of non-riding areas (i.e. at the District’s current Oso Flaco site or*

*previous Morro Bay site.) This pattern was also documented in the District's "South County Community Monitoring Project" which blanketed the Nipomo Mesa in PM10 samplers, as well as in the previously mentioned Phase 1 and Phase 2 studies. (emphasis added)*

In addition, Scripps subsequently released a follow-up report<sup>31</sup> that analyzes air quality data between April and May 2021, finding that only 14% of the PM10 measured at APCD monitors is mineral dust. Scripps then suggest that this finding implies that the other 86% of PM10 is not related to mineral dust and thus is not emanating from Oceano Dunes but rather coming from other sources. Both APCD and SAG have provided preliminary comments on the report and continue to dispute its findings and methodologies, including stating:<sup>32</sup>

***The SAG disagrees with assertions within the Scripps report that minimize the effect of OHV on PM10 emissions at the ODSVRA and PM10 concentrations at receptor sites downwind. By citing a lack of significant difference between weekday and weekend airborne PM10 concentrations as evidence for a lack of OHV impacts on PM10, the report perpetuates the misconception that OHVs produce PM emissions primarily through mechanical action during their operation. Instead, direct measurements and research by the Desert Research Institute (DRI) indicate that the primary effect of OHVs is to degrade dune surfaces and to increase the long-term PM emissivity of the dunes. Eventually, removal of OHVs should reduce PM10 emissions and concentrations, but this adjustment would occur over a matter of many months, not days. ...***

*The SAG is not convinced by analyses within the Scripps report that lead to their conclusion that only a small percentage of overall ambient PM is composed of mineral dust. The SAG has several specific concerns regarding the methodology for determining the relative mineral dust contribution. (See Appendix B, "Methodological Concerns.") In addition, a large body of evidence, including years of modeling that have guided ODSVRA dust mitigation measures, demonstrates that the ODSVRA is the primary source of airborne PM10 observed at the CDF and Mesa2 receptor sites during typical strong onshore wind days. (emphasis added)*

In short, APCD and SAG continue to disagree with the Scripps studies, and ultimately, it is the purview of CARB and the APCD to analyze air pollution and its sources. APCD has determined that the dust problems downwind of the Park are attributable to the dune degradation associated with vehicular/OHV use.

#### **4. Environmental Justice**

Coastal Act Sections 30107.3 and 30604(h) allow for the Commission to consider

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<sup>31</sup> Scripps/UCSD Interim Report 2021: Preliminary Results from May 2021 Aerosol Measurements: <https://ohv.parks.ca.gov/pages/1140/files/Scripps%20Interim%20Year%203%20Report.pdf>.

<sup>32</sup> December 1, 2021 Memorandum from the SAG to OHMVR Commission.

environmental justice when making CDP decisions. Specifically:

**Section 30107.3.** (a) “Environmental justice” means the fair treatment and meaningful involvement of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies. (b) “Environmental justice” includes, but is not limited to, all of the following: (1) The availability of a healthy environment for all people. (2) The deterrence, reduction, and elimination of pollution burdens for populations and communities experiencing the adverse effects of that pollution, so that the effects of the pollution are not disproportionately borne by those populations and communities. (3) Governmental entities engaging and providing technical assistance to populations and communities most impacted by pollution to promote their meaningful participation in all phases of the environmental and land use decision making process. (4) At a minimum, the meaningful consideration of recommendations from populations and communities most impacted by pollution into environmental and land use decisions.

**Section 30604(h).** When acting on a coastal development permit, the issuing agency, or the Commission on appeal, may consider environmental justice, or the equitable distribution of environmental benefits throughout the state.

To implement its Coastal Act environmental justice authority, the Commission adopted an Environmental Justice Policy (“EJ Policy”) to guide and inform its decisions and procedures in a manner that is consistent with the provisions in, and furthers the goals of, Chapter 3 of the Coastal Act and certified LCPs. The EJ Policy further articulates environmental justice concepts, stating:

The term “environmental justice” is currently understood to include both substantive and procedural rights, meaning that in addition to the equitable distribution of environmental benefits, underserved communities also deserve equitable access to the process where significant environmental and land use decisions are made.

Thus, the Commission’s EJ Policy underscores the importance of both substance (i.e., evaluating whether projects do or do not disproportionately distribute environmental benefits and burdens) and process (i.e., ensuring that those potentially affected by proposed development have an equitable opportunity to participate in a transparent public process).<sup>33</sup>

In addition, the EJ Policy includes a section titled “Statement of Principles” that further elaborates how the Commission intends to implement environmental justice considerations into nine specific issue areas, one of them being on Habitat and Public

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<sup>33</sup> Commission staff has been engaged with many groups over the years that raise and seek resolution to environmental justice issues at the Park, including Concerned Citizens for Clean Air, the Oceano Beach Community Association, the Dunes Alliance, and Central Coast Alliance United for a Sustainable Economy, or CAUSE, a prominent environmental justice organization focused on the Central Coast.

Health. For this issue, the Statement of Principles states:

*Understanding that public health and the health of natural ecosystems are inextricably intertwined, ecological impacts are felt first by disadvantaged and at-risk communities, and that there is no environmental justice without a healthy environment, the Commission will continue to prioritize the protection of coastal resources. ... The Commission will also work with the relevant public agencies to consider project impacts to air quality and soil health in disadvantaged communities which reduce the positive health and recreational benefits associated with coastal access and coastal resources for pollution-burdened communities.*

As described earlier, vehicular and OHV use at the Park has led to adverse air quality that disproportionately impacts the residents of adjacent downwind communities of Oceano and Nipomo in San Luis Obispo County,<sup>34</sup> as well the Cities of Guadalupe and Santa Maria (and the Santa Maria Valley more broadly) in northern Santa Barbara County as well.<sup>35</sup> These underserved communities bear the brunt of the burden of Park use, including with respect to adverse air quality, thereby raising prototypical environmental justice concerns regarding the benefits and burdens of environmental protection, and thus necessitating an analysis regarding the proposed amendment's compliance with Coastal Act environmental justice provisions.

In this case, the proposed project addresses an environmental justice problem by reducing adverse air quality impacts that affect underserved communities. This is inherently a positive environmental justice endeavor and consistent with the Coastal Act's definition of environmental justice to be comprised of measures that include "the deterrence, reduction, and elimination of pollution burdens for populations and communities experiencing the adverse effects of that pollution." In addition, the proposed amendment is consistent with the Coastal Act's environmental justice requirements by ensuring that Commission CDP actions do not unduly nor disproportionately burden particular segments of the populace with adverse environmental outcomes, particularly on issues as important and fundamental to public health and welfare as air quality. In fact, the proposed amendment is designed to help ease the air quality burdens felt by these inland communities, and thus it is consistent with Commission and Coastal Act environmental justice objectives and requirements.

Over the years, the Commission has heard from many stakeholders that the vehicular/OHV uses at the Park are contributing to disproportionate air quality impacts

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<sup>34</sup> According to the U.S. Census Bureau, Oceano is approximately 45% Hispanic/Latino with 45% of residents earning less than twice the federal poverty rate. Nipomo is roughly 44% Hispanic/Latino with 23% earning less than twice the federal poverty rate. Because the federal poverty level applies nationwide, areas with a higher costs of living, such as California (and particularly coastal California), often use the number of households or individuals with incomes below twice the federal poverty level as an indicator of poverty.

<sup>35</sup> Guadalupe and Santa Maria are 90.4% and 76% Hispanic/Latino, respectively, with 47% and 45% of the populations making less than twice the federal poverty level, respectively.

on the residents of Oceano, Grover Beach, Nipomo, Guadalupe, and Santa Maria. While Park users gain a unique form of coastal recreation, it comes at a cost that disproportionately impacts underserved communities. This presents a textbook case of environmental injustice. Through its environmental justice authority, the Commission has the ability to address these kinds of coastal inequities while also protecting dune ESHA consistent with the Coastal Act.

## **5. Cumulative Impacts**

The SAG and APCD have considered whether significantly more permanent dust control mitigation acreage, currently estimated at up to 800 acres total, will be required at Oceano Dunes to adequately address air pollution emanating from the Park. As noted above, at this time, APCD and State Parks do not know what future dust control measures would consist of, where they would be located, and how many acres would be affected. The parameters of future dust control projects will be developed as the results of the effectiveness of current dust control measures are considered. Nevertheless, if future dust control measures are the same as those proposed in this permit, including dune revegetation and prohibiting OHV, camping, and other vehicular use in dune ESHA, even a total of 800 acres of such permanent dust control mitigation measures would not only not have a significant adverse environmental impact but would instead enhance the environment by allowing restoration of fragile and rare dune ESHA. The physical environment and land at Oceano Dunes would be enhanced by such dust control measures, even if greatly expanded.

Although recreational impacts are not required to be analyzed under CEQA, public access and recreation are protected under the Coastal Act. Additional dust control acreage would have an adverse impact on vehicular recreational uses at Oceano Dunes, while enhancing more passive recreational uses, such as hiking, horseback riding, walking, and biking. As discussed in more detail in the section on recreational uses above, while the Coastal Act provides strong protections for recreational uses, the reduction of vehicular recreational uses at Oceano Dunes is consistent with, and in fact required by, the Coastal Act. Moreover, the Commission has required OHV uses to be phased out at Oceano Dunes by January 1, 2024. Thus, even if future dust control measures reduced the acreage allowed for vehicular recreational uses in ESHA at Oceano Dunes, such measures would only affect OHV uses until January 1, 2024, and the elimination of such uses in ESHA is fully consistent with the Coastal Act. In sum, although the nature and scope of future dust control measures are unknown, they are not expected to have a significant adverse environmental impact.

## **6. California Environmental Quality Act (CEQA)**

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with CDP applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment.

The Applicant, State Parks, acting as the CEQA lead agency, certified a Program Environmental Impact Report (State Clearinghouse #2012121008) for its dust control efforts on March 22, 2017, and certified an addendum to the EIR to analyze additional changes on May 28, 2020. The Coastal Commission's review and analysis of coastal development permit applications has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of environmental review under CEQA (14 CCR Section 15251(c)). As a responsible agency, the Commission complies with CEQA "by considering the EIR ... prepared by the Lead Agency and by reaching its own conclusions on whether and how to approve the project involved" (14 CCR Section 15096(a)). The Commission's conclusions in this regard differ from those of State Parks CEQA findings on certain fundamental analyses and conclusions, perhaps most critically with respect to whether and how the dust project, as amended, would lead to public recreational access impacts to OHV use that require mitigation,<sup>36</sup> as well as statements and analyses defining OHV activity as a coastal-dependent use as that term is defined under the Coastal Act.<sup>37</sup> On these issues, the Commission respectfully disagrees with State Parks, and does not here concur with State Parks conclusions on these issues. On the contrary, the preceding findings discuss the relevant coastal resource issues and Coastal Act consistency with the proposal. The Commission finds that, as conditioned, the proposed project will have no significant environmental impact.

As such, there are no additional feasible alternatives or feasible mitigation measures required to substantially lessen any significant adverse environmental effects which approval of the proposed project, as the project, as conditioned, will not have any such adverse impacts, within the meaning of CEQA. Thus, as conditioned, the proposed project will not result in any significant environmental effects for which feasible mitigation measures have not been employed, consistent with CEQA Section

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<sup>36</sup> As a mitigation measure for what State Parks' EIR concludes to be a significant and unavoidable impact to public access and recreation due to the loss of OHV acreage, State Parks intends to study the feasibility associated with replacing any area that is currently used for OHV use that is lost to such use for dust control purposes. Specifically, State Parks seeks to provide a 1:1 replacement of any OHV riding areas that become off limits to OHV use under their dust control efforts, where replacement areas would need to be within the same regional geographic location as the Park, and State Parks indicates that it intends to actively research and identify these replacement lands until three years after completion of the dust control efforts or by 2025, whichever is later. However, as the Commission found in its base dust control CDP approval and amendments since, there are numerous Coastal Act consistency issues with this replacement concept. As a fundamental point, such replacement is unnecessary and unwarranted under the Coastal Act because, for all the reasons articulated above, the dust control measures that have been approved are consistent with the Coastal Act, including its public access and recreation policies, without such OHV riding area replacement. Thus, under the Coastal Act, there is no significant adverse impact to public access and recreation that requires mitigation, let alone 1:1 replacement of riding areas. And all the dunes at the Park are ESHA where OHV use is not allowable, so any replacement area would be inconsistent with the Coastal Act. This conclusion is also consistent with the Commission's March 18, 2021 action modifying CDP 4-82-300, which will require phasing out of OHV use at the Park by January 1, 2024.

<sup>37</sup> Coastal Act Section 30101 defines "coastal-dependent development or use" as "any development or use which requires a site on, or adjacent to, the sea to be able to function at all." The riding of OHVs does not require a site on, or adjacent to, the sea, and thus it is not a coastal-dependent use under the Coastal Act. Indeed, State Parks operates at least eight other SVRAs, none of which are sited on, or adjacent to, the sea.

21080.5(d)(2)(A).

## 5. APPENDICES

### A. Substantive File Documents<sup>38</sup>

- CDP 4-82-300 as amended through March 18, 2021
- CDP 3-12-050 as amended
- *Oceano Dunes SVRA Dust Control Program* Final Program Environmental Impact Report, March 2017, State Clearinghouse #2012121008
- *Oceano Dunes SVRA Dust Control Program* Final Program Environmental Impact Report Addendum, May 2020, State Clearinghouse #2012121008
- *Nipomo Mesa Particulate Study – Phase 1*, San Luis Obispo County Air Pollution Control District, 2007
- *South County Phase 2 Particulate Study – Phase 2*, San Luis Obispo County Air Pollution Control District, 2010

### B. Staff Contacts with Agencies and Groups

- California Department of Parks and Recreation
- San Luis Obispo County Air Pollution Control District

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<sup>38</sup> These documents are available for review from the Commission's Central Coast District office.