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Th3

Prepared March 17, 2021 for March 18, 2021 Hearing

To: Commissioners and Interested Persons

From: Dan Carl, Central Coast District Director
Kevin Kahn, Central Coast District Supervisor

**Subject: Additional hearing materials for Th3
CDP Number 4-82-300 Review (Oceano Dunes)**

This package includes additional materials related to the above-referenced hearing item as follows:

Staff report addendum

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Prepared March 17, 2021, for March 18, 2021 Hearing

To: Commissioners and Interested Persons

From: John Ainsworth, Executive Director
Dan Carl, Central Coast District Director
Kevin Kahn, Central Coast District Supervisor

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

The purpose of this addendum is to supplement staff's recommended findings in support of the recommended Commission action on the above-referenced Oceano Dunes CDP review item and to respond to materials submitted by various parties regarding the staff report and its recommendation (i.e., the staff report dated February 16, 2021). Yesterday evening, March 16, 2021, staff received a 135-page response letter from State Parks that opposes the staff recommendation, and has also received over 8,000 emails and letters since the staff report was published (approximately 90% of which were in favor of the staff recommendation), including from a variety of elected officials, tribal representatives, public agency representatives, groups with an interest in Oceano Dunes matters, and individuals (see the correspondence package for this item). Some of these interested parties support the staff recommendation, and others oppose it. Herein, staff provides a response to comments to be added to the staff report as Commission findings, and makes some minor staff report text changes to correct typographical oversights.

Before going any further, staff notes that it is confident that the staff report and recommendation are based on sound science, clear analysis, and the law as applied in the CDP review context, and does not herein substantively alter the staff recommendation. The following is added as a new staff report section (Section 12) beginning on staff report page 179:

12. Response to Comments

A. Five-Year Transition

Many commenters suggest that staff's recommended five-year transition period to eliminate OHV use at the Park is too long, and that allowing for that length of time means that all of the impacts associated with that use, including as detailed in the staff report, will thus be allowed to continue for five years when the Coastal Act and applicable LCPs don't allow for the use and its impacts at all. Such commenters are particularly concerned in terms of the dust, air quality, and public health impacts that

would be allowed to continue for five more years, and they assert that the allowed transition time should be shorter, such as by the end of 2021.

Staff does not dispute that facts and the law do not allow for vehicular and OHV uses in ESHA, and that the Commission could require the prohibition of such uses before the five-year period identified by staff. And staff recognizes that five years is a long time to allow for continuing significant detrimental impacts on beach and dune habitats, as well as significant impacts on air quality and public health, underserved and adjacent communities, and sacred tribal areas. At the same time, and as articulated in the staff recommendation, staff also believes that State Parks needs some space and time to plan, budget, and make the changes necessary to effectuate the recommendation, and staff is sensitive to State Park's needs in this respect. At the end, it is not a specific fact or law per se that directs five years, rather it is a judgment call as to how long to temporarily allow for such uses and impacts in that context, and staff's judgment was five years. Ultimately, that is a question for the Commission to consider if it decides to prohibit such uses, and it could establish a different time frame for such prohibition.

B. 2019 Commission Direction to State Parks on its PWP

In their comment letter, State Parks asserts that they addressed all of the Commission's 15 identified requirements from the Commission's July 2019 action in their draft PWP. As a preliminary note, the PWP is not before the Commission for consideration and potential action as part of this CDP review hearing. However, staff provides an overview and general analysis of the PWP's proposed provisions beginning on page 141 of the staff report and the report constitutes the Commission's public comments on the draft. The analysis overall concluded that "the draft PWP does not meet these goals and objectives, nor does it truly address the Commission's requirements," and discusses in some detail the reasons for this determination. Of note, staff walks through the requirements identified by the Commission in 2019 and how State Parks addresses those requirements in the PWP in the staff report.

While acknowledging that certain PWP proposals are consistent with the 2019 action, including related to use limits, holiday exceedances, and the elimination of the TRT, the report also explains how some provisions simply lack sufficient detail on how they will be carried out (e.g., in terms of requirements related to trash and predator management, fencing, and public outreach). The PWP would require specific, explicit, detailed and enforceable measures to actually address these Commission requirements as directed. Staff's assessment is that is not the case in the draft PWP. In addition, certain of the Commission's requirements aren't actually addressed at all. For example, the Commission required the seasonal habitat enclosure to be made permanent, that nighttime vehicular activity be prohibited, and that Arroyo Grande vehicular crossings be prohibited. The PWP does none of these things. For the seasonal enclosure, State Parks actually proposes to keep it seasonal and to also reduce its size by 109 acres, more than a one-third reduction. Staff notes that the areas proposed to be eliminated from the enclosure and opened to vehicular and OHV activity year-round is the area where 80% of California least tern population nests on an annual basis according to CDFW's PWP comment letter (also in the correspondence package), and where 25 to 45 percent of all plover nests were found as well. For nighttime vehicular activities and

Arroyo Grande vehicular crossings, the PWP continues to allow both, subject to potential future changes subject to further study. State Parks' letter also identifies some elements of its PWP that staff cannot find in the PWP (e.g., the Commission oversight and monitoring program to replace the TRT, a CDP process for special events (in fact staff's assessment is that the PWP was clear that special events would be handled by Parks outside of the PWP), etc.). The PWP also explicitly leaves dust control measures to separate non-PWP processes and includes no such detail in the PWP (when the Commission required that they be addressed in detail in the PWP), and concludes that the two vehicular entrances into the Park are permanent and final without supporting detail and evidence (when the Commission required an analysis of alternatives to address the significant coastal resource impacts that accrue to these entrances). Finally, the Commission directed State parks to evaluate a Park without OHV, and instead Parks summarily dismissed this alternative without any evaluation of what such a Park could or would provide, its costs and benefits, impacts, etc..

All told, in staff's estimation, about 10% of the Commission's 2019 requirements were addressed, about 25% were discussed but lack the kind of detail necessary to actually address them, and about 65% were either missing altogether or exacerbated the impact the Commission had directed Parks to address. Given the wide disparity between Parks' assessment of the contents of the draft PWP and Commission staff's assessment, at a minimum, Commission staff believes that this points to there clearly being some ambiguity in the draft and that clarity is needed. Commission staff would like to continue to work together with Parks' staff to ensure that the contents of the PWP are clear, focused, and unambiguous.

C. Public Participation/Due Process/Separation of Powers

Friends of Oceano Dunes asserts that its due process and fair hearing rights have been violated because it is unable to obtain a fair hearing before the Coastal Commission. It asserts that the Commissioners have determined pre-hearing that they intend to prohibit OHV use at Oceano Dunes. Friends of Oceano Dunes cites no evidence for these assertions. The Commission has held numerous public hearings related to CDP 4-82-300, including informational briefings and an action in July 2019 at which the Commission directed State Parks to address a list of Commission concerns when it prepared its PWP. At none of these prior hearings has the Commission taken an action to prohibit OHV use at Oceano Dunes. And all of these prior actions have properly taken place in open, public session after the public has been given an opportunity to speak.

In addition, Friends of Oceano Dunes complains that the Commission does not have the authority to require OHV use to be phased out at Oceano Dunes because Oceano Dunes is legislatively authorized. It cites to no such legislation, however, and fails to explain why it believes the Commission is not authorized to implement the Coastal Act and applicable LCPs in the context of a CDP hearing. To the contrary, the Commission is required to assess the consistency of development in the coastal zone with the policies of the Coastal Act and, in this case, LCPs. That Friends of Oceano Dunes disagrees with the Commission staff's analysis of those policies does not raise a separation of powers issue.

Friends of Oceano Dunes further notes that the Coastal Commission representative for the South Central Coast has been vacant “for some time.” While it is true that this position has been vacant for just over one month, this hearing had been planned for February or March of 2021 well before this vacancy occurred, and there is no bias inherent in the decision to keep this item on the agenda.

Other commenters claim that the process for the Commission to consider this proposed addendum has lacked significant public participation and has been unfair. For example, in their letter dated March 12, 2021, the California Off-Road Vehicle Association, or CORVA, asserts that the staff recommendation and report was written in a manner that disregarded public sentiment and comments, as well as lacked transparency and undermined the public trust (CORVA letter p. 7). Staff strongly and vehemently disagrees. As stated on page 179 of the staff report:

The reality is that the Commission here has applied the available facts to the required law to come to its decision, and it is the facts and the law that require these outcomes. To claims to the contrary, the Commission does not favor one Park user over another in this debate, rather the Commission is tasked with evaluating how the uses themselves affect coastal resources, and based on that analysis how those uses must change to be consistent with the law.

Staff’s analysis and recommendation is rooted in its best evaluation of facts based upon science and law. Any argument to the contrary, including that the recommendation is politically motivated and targeted to repudiate a specific group of people, as CORVA suggests, is fundamentally untrue.

And second, with respect to process and public involvement/engagement, beginning on page 34 of the staff report, staff identifies a lengthy history regarding recent Oceano Dunes matters, including beginning with a CDP review in 2015 that identified a series of coastal resource issues, leading to the July 2019 CDP review hearing in San Luis Obispo where the Commission directed State Parks to address 15 specific items in its PWP efforts, including an evaluation of a phase-out of OHV use. Since that 2019 hearing, State Parks also provided four PWP updates to the Commission. In October 2020 at the final PWP update, Commission staff provided a report that identified the tentative recommendation for how to address Oceano Dunes’ future, including a five-year phase out of OHV use, retainment of a significant new camping area, and enhanced habitat protection protocols. This report can be found here:

<https://documents.coastal.ca.gov/reports/2020/10/Th6a/Th6a-10-2020-report.pdf>. Given that the tentative staff recommendation was made public, and to further solicit public comments on the recommendation and to understand the public’s issues with it and Park issues more broadly, staff undertook an extensive outreach program. Specifically, staff held roughly two dozen Zoom sessions and conference calls with local officials in area cities (i.e., Grover Beach, Guadalupe, Pismo Beach, and San Luis Obispo County), local community groups (e.g., the South County Chambers of Commerce), known interested parties (e.g., the Dunes Alliance, Oceano Beach Community Association, and Friends of Oceano Dunes), and elected officials at the local, State, and Federal levels. The conversations were cordial and productive, even with those that

disagreed with the staff recommendation and supported continued OHV use. Staff also, in January 2021, developed a separate Oceano Dunes webpage, with translation in Spanish, to serve as a repository of Oceano-related documents and plans (including State Parks proposed PWP) and a description of Commission staff's recommendation. Finally, staff also publicly released the staff report and recommendation on February 16, 2021, over a month before the March 18 hearing, to further allow for additional public participation given the significance of the item.

In short, staff has worked on Oceano Dunes matters in a public and transparent process and crafted the staff recommendation in part based on the significant public comments received over the years. In fact, as discussed on page 162 of the staff report and in Exhibit 14, staff reviewed the roughly 5,500 pieces of public correspondence received since the last CDP review hearing in July 2019 and prior to the staff report being published, and analyzed trends and commonalities, all of which helped craft the staff recommendation. To suggest that the staff report failed to acknowledge those public concerns, or that staff didn't listen or hear what the public wants, is inaccurate and misplaced.

D. Violation of the SVRA Act

Some commenters have suggested that prohibiting OHV use at Oceano Dunes would violate another state law, namely the Off Highway Motor Vehicle Recreation Act (Public Resource Code (PRC) Section 5090 et. seq.). This is incorrect. As the staff report describes on pages 169-171, nothing in the Off Highway Motor Vehicle Recreation Act requires that OHV use continue at Oceano Dunes and a prohibition on OHV use at the park would not require any action by the State Legislature.

Although it is true that Section 5090.40 of the original Off Highway Motor Vehicle Recreation Act enacted in 1982 did list Pismo Dunes as being within the State Vehicular Recreation Area and Trail System, this reference was removed by the Legislature in 1991. Had the Legislature wanted to require the Oceano Dunes remain in the SVRA system it could have done so at that time. Instead it deleted the reference to Oceano Dunes/Pismo Dunes and has not reinserted it during later amendments to the Act. Further, the staff recommendation is not based on an application of any part of the Off Highway Motor Vehicle Recreation Act.

Senator Ben Allen, the author of SB 249, has recently issued a letter in support of the staff recommendation (in the correspondence package). SB 249, which was authored and enacted in 2017, is the most recent amendment to the Off Highway Motor Vehicle Recreation Act. In his letter, Senator Allen states that Oceano Dunes "was one of the most cited parks in terms of environmental degradation, land use conflicts and public health impacts." He reiterates that the "Legislature expressed its clear intent that OHV parks management activities place a higher priority on environmental protection, by avoiding impacts in the first instance, protecting sensitive habitat and cultural sites, and mitigating fully for unavoidable impacts" and "applaud[s] [Commission] staff for taking the position that the time has come for the Coastal Commission to address these issues directly[.]"

Finally, State Parks implicitly acknowledges that reclassification of the Park would require no action by the legislature (see State Parks letter dated March 16, 2021, pages 60-61). It would only “require the approval of the State Park and Recreation Commission and possibly the Off- Highway Motor Vehicle Recreation Commission, revision of State Parks’ regulations classifying Oceano Dunes as an SVRA, a change in funding source, and a new joint general plan.” State Parks asserts that “[t]hese tasks would take considerable staff time, public input, environmental review, and money to complete.” This may very well be true, but this is not the same as asserting that a prohibition on OHV at Oceano Dunes would be violating the Off Highway Motor Vehicle Recreation Act or would require an act of the State Legislature.

E. OHV Use and ESHA Consistency

A number commenters take issue with the staff report’s analysis of the ESHA provisions of the LCP and the conclusion that OHV use is inconsistent with LCP and Coastal Act policies protecting ESHA (e.g., Friends of Oceano Dunes comment letter footnote 6, State Parks comment letter at pages 40-55, CORVA comment letter pages 2-3, and OHMVR comment letter pages 3-5). To respond to these comments, it is helpful to look at the LCP and Coastal Act requirements applicable to the identification and protection of ESHA and the analytical framework for assessing development that is potentially taking place in ESHA. The following walks through a series of ESHA and OHV consistency points raised.

Where is ESHA at Oceano Dunes?

First, the Commission must determine the location of ESHA. The San Luis Obispo County LCP maps the vast majority of Oceano Dunes as ESHA. State Parks relies on a Commission staff report from 2005 to argue that even though the certified LCP maps ESHA, the Commission has found that it must make site-specific ESHA determinations under the LCP (State Parks letter page 41). In the staff report cited by State Parks, the Commission found that ESHA existed not only in the areas mapped in the LCP, but in additional areas as well (staff report for A-3-SLO-03-117 pages 20-21). The Commission did not conclude in that case that areas mapped as ESHA in the LCP could effectively be “unmapped” as ESHA. Even if the LCP allowed for mapped ESHA to be unmapped if it no longer meets the definition of ESHA, as thoroughly analyzed by the Commission’s staff biologists, the dunes at Oceano Dunes meet the LCP and Coastal Act definition of ESHA (Staff Report, Exhibit 9). These resources are both extremely rare and easily disturbed (*Id*). Thus, both as mapped in the LCP and based on a site-specific evaluation, the vast majority of Oceano Dunes constitutes ESHA.

What Uses Are Allowed in ESHA?

The Commission must determine whether OHV use is allowed in ESHA. Under both the San Luis Obispo LCP (LUP Policy 1) and Coastal Act Section 30240, a use may only be allowed in ESHA if it meets *both* of the following tests: 1) it is a use dependent on the habitat resource; and 2) the use does not significantly disrupt the resource’s habitat values. Vehicular and OHV uses meet neither of these tests.

The Commission has found that such things as hiking and educational trails, low impact camping, educational signage and kiosks, research, and restoration qualify as resource dependent development (see, for example, Coastal Commission LCP Update Guide, Part I, Section 4, page 8). Friends of Oceano Dunes argues that OHV use is “coastal-dependent” because riding in the “unique sand dune formation is fundamental to the unique OHV experience” and it is therefore dependent on the dune habitat (Friends of Oceano Dunes letter, footnote 3). At base, this argument is that because OHV users enjoy riding in dune ESHA, the use is dependent on that ESHA. If this were all it took for a use to be dependent on the resource, however, any use that could be enjoyed in habitat, no matter how incompatible with the habitat, could be found to be dependent on the resource. This is illogical and inconsistent with the requirement that the Coastal Act be liberally construed to accomplish its purposes and objectives, including to protect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources (Coastal Act Sections 30001.5(a) and 30009). As past Commission actions demonstrate, it is only uses such as restoration, scientific study, or nature trails – activities that can *only* take place in natural habitats – that are truly dependent on the resource. While OHV users at Oceano Dunes enjoy riding in the dune habitat, OHVs need not be ridden in sensitive habitat to be enjoyed at all, and in fact are enjoyed at a myriad of inland OHV parks, some dune and some not. It is therefore not a use dependent on the habitat resource.

Even if OHV use were found to be a use dependent on subject beach and dune habitats, therefore satisfying the first part of the ESHA test, it does not meet the second test to be an allowed use in ESHA, as OHV use significantly disrupts these beach and dune ESHA habitat values. Several commentators contest this determination and assert that there is a lack of substantial evidence to support the conclusion that OHV use significantly disrupts habitat (see, for example, OHMVR letter page 3 and Friends of Oceano Dunes letter footnote 3). One articulation of this argument rests on the premise that as OHV use has been better regulated and the areas in which it is allowed have shrunk over time, biological resources at Oceano Dunes have improved and increased, so OHV use is compatible with the protection of species and habitat (OHMVR letter at 4). The fact that the elimination or restriction of OHV use in certain areas of Oceano Dunes has contributed to the recovery of habitat and species in those areas does not, however, support the conclusion that OHV use does not significantly disrupt habitat values. In fact, it shows the opposite. As OHV use has been restricted to a smaller area, biological resources have started to recover, demonstrating that overuse by OHVs caused past degradation of resources. As described in numerous studies relied upon by the Commission staff’s ecologists, substantial evidence does show that OHV use significantly disrupts habitat (staff report Exhibit 9).

Some commenters contend that as a form of recreation, Coastal Act and LCP ESHA policies protect OHV use (see, for example, Friends of Oceano Dunes letter footnote 3 and CORVA letter page 5). Neither commentator cites to an LCP policy to support this argument. Rather, they cite to Coastal Act Section 30240(b), which requires development adjacent to ESHA and parks and recreation areas be sited and designed to be compatible with the continuance of those areas, and they assert that this means that the OHV use, itself, must be protected under the ESHA policy. This is inaccurate.

First, OHV use at Oceano Dunes is currently occurring *in* ESHA, however, and not adjacent to it, so this provision does not apply. And even if it did apply, OHV use does significantly degrade ESHA. And there are numerous types of recreational uses that can be allowed at Oceano Dunes without significantly disrupting ESHA resources, as described in the staff report.

40 Years of Historical OHV Use

State Parks and others assert that because there is more than forty years of history of OHV use being authorized at Oceano Dunes, through CDP 4-82-300 and the LCPs, this demonstrates that such use is consistent with the LCPs and Coastal Act ESHA policies. (see, for example, State Parks letter pages 40-48, and OHMVR letter page 3). State Parks relies, in part, on findings from the Commission's approval of amendment 3 to CDP 4-82-300, which allowed OHV use in historically unvegetated open sand areas or "areas which have been damaged so extensively by past vehicle entry that revegetation is unlikely" (State Parks letter at page 42). To the extent that either the LCP or past CDP decisions relied on the idea that disturbed ESHA need not be protected to the same extent as undisturbed habitat areas, these decisions pre-dated caselaw finding to the contrary. In 1999, the court in *Bolsa Chica Land Trust v. Superior Court* ((1999) 71 Cal.App.4th 493, 508) held that "disturbed" ESHA is protected under Section 30240 to the same extent as pristine ESHA.

In the 20+ years since the *Bolsa Chica* decision, the Commission has amended CDP 4-82-300 once and re-authorized OHV use in ESHA in a number of CDP re-reviews. As described in the staff report, these actions were premised on there being continued study of the impacts of OHV use and of the appropriate "carrying capacity" for such use at Oceano Dunes (Staff Report pages 7, 33-34). No adequate and definitive carrying capacity study has been completed, and the scientific evidence available to the Commission today demonstrates that OHV use significantly disrupts habitat and is not allowed in ESHA (Staff Report pages 57-63, Exhibit 9). In addition, even if the Commission found OHV use to be compatible with the San Luis Obispo County LCP and Coastal Act's ESHA protection policies, if the evidence available today demonstrates, as it does, that such uses are not consistent with ESHA protection policies, the Commission is not obligated to follow past precedent (*Liberty v. California Coastal Com.* (1980) 113 Cal. App. 3d 491, 499 (1980) (the Coastal Commission is "not confined to the narrow circumspection of precedents, resting on past conditions which do not cover and control present day conditions obviously calling for revised regulations to promote the health, safety, morals or general welfare of the public."))).

In addition, in the time since CDP 4-82-300 was last amended and the time that the San Luis Obispo County LCP was certified, the OHV laws that apply to Oceano Dunes have been amended. There was a time when one could argue, as State Parks and even Commission staff did, that OHV use was required to be allowed at Oceano Dunes, based on the statutes that existed at the time. As discussed above, such statutes were amended to remove the specific reference to Oceano Dunes as an OHV park, and in 2017 resource protection policies were added to the OHV Laws.

Conflict Resolution

In its letter, State Parks describes the Commission's process of "conflict resolution" under the Coastal Act and suggests that the Commission's resolution of the "conflict" between OHV recreation and ESHA is embedded in the CDP and LCP policies (State Parks letter pages 45-47). State Parks identifies a number of LCP policies that allow OHV use at Oceano Dunes, and it also points to CDP 4-82-300, which has authorized such use for more than 40 years. Commission staff has not ignored these prior actions and findings. What it has done, though, is reviewed the LCP policies, in particular, to identify what is ESHA and what is allowed in ESHA, and then whether there are LCP policies that **require** OHV use at Oceano Dunes, despite inconsistencies with the ESHA policies (staff report pages 57-63). After undertaking this analysis, the staff report concludes that the LCP allows OHV use at Oceano Dunes and has done so for more than 40 years, but there are no provisions that require the continuation of this use in the face of the evidence available today that such use is significantly degrading unique and fragile habitat areas.

As State Parks states, Coastal Act Section 30007.5 allows the Commission, when the Coastal Act is the standard of review, to invoke conflict resolution under certain, limited, circumstances. It did so when it approved camping at Fort Ord State Park, when the proposed development could minimize and mitigate impacts to ESHA, and when the Coastal Act was the standard of review (State Parks Letter page 46). There are no similar provision in the LCPs, however, that would allow "balancing" of recreational interests against ESHA. The remedy if there is an irreconcilable conflict among LCP policies, is for the local government to amend its LCP. San Luis Obispo County could seek to amend its LCP to require the allowance of OHV at Oceano Dunes, but it has not yet done so, and the existing LCP acknowledges and allows OHV use at Oceano Dunes, without requiring it. In addition, the camping proposed at Fort Ord had a relatively small, defined, footprint that minimized impacts to ESHA and those impacts could be mitigated. At Oceano Dunes, the impacts of hundreds of thousands of OHVs being ridden, annually, through ESHA, cannot be effectively minimized or mitigated (Staff Report, Exhibit 9, pages 15-17).

Other ESHA Arguments

Some commenters have asserted that settled caselaw has found that OHV is an allowed use in ESHA at Oceano Dunes, citing the *Sierra Club v. Department of Parks & Recreation* (2012) 202 Cal.App.4th 735 case. This case made no such determination; it simply denied Sierra Club's request for a traditional writ of mandate to require State Parks to eliminate OHV at Oceano Dunes as being both unripe and too late (*Id.*, at 738). The court declined to make any determination regarding the propriety of OHV use in ESHA at Oceano Dunes.

F. Coastal Act Public Recreational Access Provisions

Some have argued that a prohibition on OHV use would violate the Legislature's declared goal to maximize public access and public recreational opportunities in the coastal zone. But, as discussed extensively in the staff report (see, for example, pages 44-45 (Coastal Act discussion), 52, 54 (LCP discussion), and 75-76), neither the Coastal Act nor the LCP require this recreational access to be maximized at the

expense of environmental protection. As the Legislature declared in Coastal Act Section 30001.5(c), such access must be “consistent with sound resources conservation principles.” As described in the staff report, OHV use in the rare and fragile ecosystem found at Oceano Dunes is not consistent with this principle. As such, a prohibition on OHV use at Oceano Dunes is not contrary to the Coastal Act’s public recreational access goals. To prioritize the Coastal Act’s public recreational access provisions above all else and with no limiting principle would essentially require the Commission to allow literally any form of recreation, no matter its impacts to coastal resources. This is not what the Legislature intended and accordingly is not what the Coastal Act requires.

Confusingly, CORVA, in its letter argues that the staff recommendation would violate Section 30001.2 of the Coastal Act. This section states:

The Legislature further finds and declares that, notwithstanding the fact electrical generating facilities, refineries, and coastal-dependent developments, including ports and commercial fishing facilities, offshore petroleum and gas development, and liquefied natural gas facilities, may have significant adverse effects on coastal resources or coastal access, it may be necessary to locate such developments in the coastal zone in order to ensure that inland as well as coastal resources are preserved and that orderly economic development proceeds within the state.

It is unclear why CORVA believes that OHV use is similar to infrastructure such as electrical generating facilities, refineries, and “coastal-dependent developments” like ports and commercial fishing facilities, offshore petroleum and gas development, and liquefied natural gas facilities. At best, CORVA attempts to include OHV-use as a “coastal-dependent developments”, despite the examples given by the Legislature clearly consisting of an entirely different category of development. Further, the staff report extensively discusses why OHV use is not “coastal-dependent” on pages 61-63. Additionally, even if CORVA could argue that OHV use is necessary for “orderly economic development” in the state, as discussed extensively in the staff report on pages 163-169, it is far from clear that an OHV-free park would have a negative economic effect on the community.

Contrary to the assertions of many opponents of the staff recommendation, a prohibition on OHV use is not “closing the park.” Under the staff recommendation, Oceano Dunes would still be open to numerous lower impact activities. The Off-Highway Motor Vehicle Recreation Commission noted that Oceano Dunes is the only state managed public lands in California with camping allowed on the beach (OHMVR Letter page 2). In its response letter, State Parks notes that its draft PWP includes a proposal for 500 beach camping sites (State Parks letter 15, 57). Under the staff recommendation that would not change.

G. CEQA Comments

Numerous arguments have been made by State Parks, among others, that the Commission’s staff report does not comply with 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. The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of environmental review under CEQA.

As a functionally equivalent process, the staff report serves as the CEQA-equivalent document here and discusses the relevant coastal resource issues with State Park's CDP. The suggested conditions listed in the staff report on pages 22-26 identify appropriate modifications to avoid and/or lessen any potential for adverse impacts to said resources. The staff report also extensively analyzes the effects of OHV use on the environment as an alternative, as well as what the effects would be of a prohibition on OHV use, as recommended by staff. All major categories of public comments received to date have been addressed in the staff report and this addendum and are incorporated herein in their entirety by reference.

As such, there are no additional feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse environmental effects which re-review of the proposed project, as conditioned, would have on the environment within the meaning of CEQA. Thus, if so conditioned, the project will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).

Friends of Oceano Dunes attempts to argue that the staff recommendation and staff report violate CEQA by failing to analyze the impacts of eliminating OHV recreation. Friends does so by citing to some of the portions of the Coastal Act on public recreation, some court cases, and then concluding without analysis that "the CCC staff completely disregards its obligation to protect coastal recreational areas by banning OHV at a park expressly established to facilitate and promote OHV recreation" (Friends Letter pages 17-18). Liberally construing this section of Friends' letter, Friends appears to be arguing that OHV recreation is protected under CEQA and that impacts to that recreation, rather than the dune habitat, is required to be addressed.

Assuming that this argument has merit and that CEQA demands an analysis of the impacts to recreation that would occur from a prohibition on OHV use, the staff report does so. This analysis pursuant to the Commission's functionally equivalent CDP process is discussed throughout the staff report and in particular on pages 75-80. But on some level the entire staff report is one based on a Coastal Act/LCP public access and recreational analysis, including discussing the Park's current recreational offerings, the impacts and issues associated with those offerings, and the legal jurisprudence and policies addressing public recreational access and coastal resource management issues. The recommendation is the summation of how to strike that appropriate balance of providing for public recreational access in an area that is overwhelmingly ESHA, including by creating a new campground in an area where one currently is not, by providing for an equivalent number of camping spaces as what State Parks currently allows and what they propose in their PWP, as well as providing for all other forms of lower-intensity access and recreation throughout the Park (including beachgoing, equestrian use, and hiking). The recommendation is what staff believes to be reflective

of the types of access and recreation that can be accommodated consistent with the law. The status quo is what is having impermissible impacts on habitat, air quality, and other coastal resources, and the staff report acknowledges that those impacts will be reduced or eliminated with the staff recommendation. So no mitigation is needed for the staff recommendation because it is consistent with the Coastal Act and LCPs, and will in fact provide mitigation for the impacts occurring under the status quo.

In its comment letter, Friends of Oceano Dunes includes pages of argument about the Commission's alleged pattern and practice of violating CEQA and the Coastal Act when approving CDPs for dust control measures at Oceano Dunes. First, there is no such pattern and practice; in the one dust control case which has been fully adjudicated, the court found that one of the Commission's special conditions could be interpreted to allow significantly more dust control measures than either State Parks or the Commission had believed the Commission had authorized. In response to the adverse ruling, the Commission clarified the special condition at issue, and the court discharged the writ.

In addition, there has been no "drastic" alteration of the proposed PWP, much less a last-minute alteration (Friends of Oceano Dunes letter page 25). The Commission is not taking an action on State Parks' draft PWP – in this action it is providing comments on the draft. In addition, as noted above, the Commission has been on record since at least July 2019 that State Parks should address the possibility of no OHV use at Oceano Dunes. For months, Commission staff have also met with interested stakeholders, including Friends of Oceano Dunes, to explain the staff recommendation to phase out OHV use at Oceano Dunes. This staff recommendation is not last minute, nor a surprise.

CEQA Stable Project Description

Friends of Oceano Dunes argues that the proposed action violates CEQA's stable project description requirement because the staff recommendation is different than what was contained in the draft PWP (Friends Letter pages 8-11). Friends of Oceano Dunes characterizes this as a change in the project description and that the Commission should instead be holding a hearing on the draft PWP, rather than re-reviewing the CDP (per the CDP's own unique re-review terms). As an initial matter, this argument fails because, as described further below (and in response to other arguments by Friends of Oceano Dunes), the draft PWP remains a draft that has not been submitted to the Commission for approval. As the PWP has not been submitted, it would not properly be before the Commission for any sort of action at this time.

In support of its argument, Friends of Oceano Dunes cites to *North Coast Rivers Alliance v. Kawamura* ((2015) 243 Cal.App.4th 647). In *Kawamura*, the California Department of Food and Agriculture (CDFA) prepared and certified a programmatic environmental impact report (EIR) for a seven-year program to eradicate an invasive moth but then approved a seven-year program to control that moth based on new information that eradication was no longer attainable. The situation here is easily distinguishable for two key reasons. Unlike in *Kawamura*, there is no certified EIR here. State Parks has a *draft* EIR, and that draft has not been certified and is for a draft PWP

that has not been submitted. Friends of Oceano Dunes impermissibly conflates the unsubmitted draft PWP process being worked on by State Parks with the Commission's re-review of the CDP.

Second, in *Kawamura*, the court did not actually find that the CEQA was violated due to the "last-minute change." Rather, the Court found issue with the lack of analysis of that change. The Court stated that:

We need not belabor appellants' arguments that the last-minute change violated CEQA; we will conclude that, even without the last-minute change, the EIR violated CEQA, requiring reversal of the judgments. The last-minute change to a seven-year control program instead of an eradication program does not save CDFG from reversal, because there is no assurance that a CEQA-compliant EIR will be prepared in the event of post-2017 activity. (At 243 Cal. App. 4th at 666.)

The Court reiterated that the "last-minute change" was not the basis for its conclusion again in the summary:

We conclude the EIR violated CEQA by failing to analyze a control program as an alternative to an eradication program, with the consequence that the EIR dismissively rejected anything that would not achieve full eradication. The error was prejudicial, requiring reversal of the judgments. CDFG's last-minute change from an eradication program to a control program did not cure the prejudice, because the EIR dismissively rejected the control feature that would not achieve eradication, and the EIR's cumulative impacts discussion did not address the reasonably foreseeable need to continue pest control efforts after expiration of the seven-year period. (Id, at 683.)

The Court's key concern was that the change from an eradication program to a control program was impermissible because the control program alternative was not adequately analyzed in the EIR.

Here, the Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. It cannot be reasonably argued that the Commission in its Staff Report and extensive biological report (see Exhibit 9 to the staff report) has failed to analyze the impacts of the staff recommendation.

Further, both Friends of Oceano Dunes and CORVA contend that the staff recommendation constitutes a "bait and switch". This is false. Commission staff has spent months discussing its recommendation with a variety of stakeholders, including Friends, as described in the preceding discussion regarding procedural and outreach history.

H. Violation of PWP and LCP Requirements

Friends of Oceano Dunes contends that an action on the staff recommendation would violate several sections of its regulations (Friends Letter pages 11-12). Specifically, the letter states that Title 14 California Code of Regulations (CCR) Section 13355 is being

violated because Commission is not distributing the “environmental information on the PWP to the public prior to public hearing on the plan” and by not holding a “public hearing on the proposed PWP”; 14 CCR Section 13357(a)(2) is being violated because the Commission has not consulted “with the affected local government who may recommend modifications necessary for the proposed plan to adequately carry out the certified local coastal program”; and 14 CCR Section 13357(a)(3) is being violated because the Commission has not set and held a public hearing on the PWP.

These arguments are wholly without merit for the simple reason that State Park’s draft PWP has not been submitted to the Commission for approval. Although the draft PWP is available to the public, this does not constitute submission. Accordingly, the requirements of 14 CCR Section 13355 and 14 CCR Section 13357 have not come into effect. Even if the PWP had been submitted to the Commission by State Parks, which it has not, 14 CCR Section 13354 would require the Commission’s Executive Director to deem it filed before the requirements of 14 CCR Sections 13355 and 13357 became active. No such determination has been made in response to the draft PWP.

Some public comments received both before and after the release of the staff report, including from State Parks, the Off-Highway Motor Vehicle Recreation Commission, and Friends of Oceano Dunes, have argued both the CDP and LCP require OHV use, including because the CDP allowed for it and the LCP includes policies governing it. But both statements are simply inaccurate. Neither the CDP nor the LCP establish any kind of permanent status or vested right for OHV use. First, the CDP was an interim first step in establishing basic Park parameters, and it clearly specified those parameters as interim and as part of a process to further evaluate and establish a permanent Park. The conditions themselves speak to requisite CDP and LCP amendments to codify permanent Park parameters in the future, and the Commission’s adopted findings when it approved the CDP in 1982 specifically spoke to the approval being the initial phase of a longer-term program to ensure the Park would be managed in conformance with the Coastal Act’s ESHA protection policies. This is discussed on page 32 of the staff report. And the CDP’s terms and conditions included what can essentially be described as backstops for noncompliance should the timelines specified for making those permanent decisions be missed. That’s the annual review process, a very unique mechanism for the Commission to rehear the CDP and make changes if need be for coastal resource protection. So the fact that there is a hearing on the CDP is evidence of the fact that no permanent decision on the Park, including making OHV use permanent, has ever been made.

And the LCP mirrors the CDP in this regard. The policies specific to Oceano Dunes are all centered around making final decisions regarding Park parameters and include standards for required evaluation. So even though there are some policies that describe OHV use, those policies all serve as starting points for that future evaluation, and they mirror the CDP’s conditions that require the same thing, including specifically identifying the need for an LCP amendment that codifies a final permanent Park. The LCP also specifically maps essentially the entire Park, including the entire OHV riding area, as ESHA where such use is specifically not allowed. So clearly there is no mandate to

require OHV use in the LCP – again, quite the opposite in fact. This is all discussed beginning on page 63 of the staff report.

It's also important to note that those CDP terms and conditions and LCP policies were written almost 40 years ago. We know more today about the science and legal jurisprudence regarding OHV use in ESHA, and in light of all this, staff does not believe the findings can be made that the CDP or the LCP allows for OHV use or in any way establishes a permanent vested right to continue such use.

I. Camping

On page 51 of their letter, State Parks also asserts that the beach camping area identified in the staff recommendation between West Grand and Pier Avenues can only accommodate about 80 campsites, far below the 500 staff identifies as the maximum in the recommended conditions. Parks asserts that this is because of topography and site constraints, including sea level rise, that may reduce the functional space in which camping may be provided. As preliminary note, as stated on staff report page 176:

The beach between West Grand and Pier Avenues is identified for the vehicular and camping area to address habitat needs (i.e., areas further south are the primary sensitive habitats for plovers and terns and are designated ESHA, whereas the northern area is not so encumbered) as well as to address Oceano community needs of having a vehicle-free stretch of sand in their community. Doing so would also allow Pier Avenue to become entrance vehicle free and allow for community visioning of new economic development in this area. The stretch of sand for camping and vehicular use is also slightly longer than the current primary camping area between Marker Posts 3 and 4.5, thereby offering an equivalent camping experience in a much less impactful manner – and, critically, one that is Coastal Act and LCP compliant.

Thus, the staff recommendation is to provide for the same amount of camping units State Parks currently allows and the same amount proposed in their PWP in roughly the same amount of space as the existing primary camping area between Marker Posts 3 and 4.5. It should also be noted that given that the existing camping spaces are not defined but rather are available in any configuration a camper deems fit, there is ample flexibility in space configurations. However, in reaching the 80 space conclusion in the letter, State Parks assigns defined camping boundaries and space limits of 3,229 square feet per single camping space and 9,687 square feet per group camping space. It is unclear where these numbers come from, particularly given that the PWP establishes a goal of providing 2,000 square feet per camping space. In other words, while the existing camping situation is not constrained into specific spatial boundaries, State Parks cites these specific boundary numbers to conclude that camping would be reduced under the staff recommendation. State Parks also states that certain coastal processes and constraints to camping, such as sea level rise, would affect the new camping area. Clearly, sea level rise would also constrain both the new and the existing downcoast camping area. Both areas would be subject to these forces, and given that large RVs would have similar problems of migrating inland into the backdunes to find adequate camping space, the issue applies to both.

One issue that wasn't addressed in State Parks' analysis was dust control and air quality further limiting camping space. As mentioned in the San Luis Obispo APCD's letter, several hundred acres of dune restoration will still be needed to address dust efforts, some of which may be located in the prime camping areas nearest the foredunes, as was done for the 48-acre foredune restoration area proposed by State Parks and approved by the Commission in CDP 3-12-050-A1 in July 2020. That approval reduced the prime camping area from 125 acres to 65 acres (as discussed on page 100 of the staff report). It's possible that no additional prime camping space would be needed to be restored, or it's possible that many acres would need to be, but this uncertainty is evidence that the current camping area is in flux and should be relocated to a space that doesn't implicate itself in air quality needs, or, critically, that isn't critical habitat under the Endangered Species Act and ESHA under the Coastal Act. Whether 500 camping spaces in either location is feasible to be accommodated is a valid question, but the important point is that question applies to both areas.

J. Environmental Justice

Friends of Oceano Dunes makes several arguments related to the Commission's Environmental Justice (EJ) Policy and the EJ analysis contained in the staff report. The arguments are as follows: (1) the Commission has failed to define "underserved" communities and that it is not the correct standard for considering environmental justice; (2) that the EJ policy is void for vagueness because it fails to explain what the Commission may consider environmental justice when evaluating a permit; (3) that the definition of EJ in Coastal Act Section 30107.3 is similarly void for vagueness; (4) that the Commission impermissibly balanced EJ considerations against other Coastal Act policies; (5) that the EJ policy constitutes an impermissible delegation of authority by the legislature; and (6) that the Commission has interpreted the data on which communities are burdened incorrectly.

As an initial matter, staff is rather dismayed at Friends' cavalier dismissal of environmental justice issues (for example Friends writes: " 'environmental justice' does not in any way define that term with respect to 'underserved' communities, whatever that means."). The Legislature and state government have made it unequivocal that environmental justice is a major policy priority for the state of California (e.g., Government Code Section 65040.12 (establishing the Office of Planning and Research as the coordinating agency in state government for environmental justice programs); the establishment of the Bureau of Environmental Justice within the Environment Section at the California Department of Justice; Public Resources Code Section 71113 (requiring the Secretary for Environmental Protection to "convene a Working Group on Environmental Justice to assist the California Environmental Protection Agency in developing, on or before July 1, 2002, an agencywide strategy for identifying and addressing any gaps in existing programs, policies, or activities that may impede the achievement of environmental justice.")). The State Legislature has evinced a clear

concern for and prioritization of environmental justice as a legislative objective, even if Friends of Oceano Dunes does not.

Turning to its application in the Coastal Act, in 2016 and 2019 the State Legislature amended the Coastal Act as follows. First in Coastal Act Section 30107.3 it defined environmental justice:

(a) "Environmental justice" means the fair treatment and meaningful involvement of people of all races, cultures, incomes, and national origins, 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 decisionmaking process.

(4) At a minimum, the meaningful consideration of recommendations from populations and communities most impacted by pollution into environmental and land use decisions.

It also added subsection (h) to Coastal Act Section 30604, which states:

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."

These amendments to the Coastal Act evince a strong direction from the legislature for the Coastal Commission to consider environmental justice in its work.

Friends' arguments on the standard of review and balancing fail because they are based on a misunderstanding of how the Commission applies its EJ Policy. The Commission does not use "underserved communities" as a standard of review and did not do so here. It also does not balance EJ concerns against other Coastal Act policies. Instead, the EJ consideration in 30604(h) is one lens through which the Commission considers how to interpret Chapter 3 and LCP policies – it is not itself a Chapter 3 policy itself. In other words, 30604(h) allows the Commission to consider the environmental justice components of ESHA impacts, access impacts, public health impacts, hazards impacts, etc., in a manner that is fully consistent with other Chapter 3 policies, and the

protection of significant coastal resources. As such, Friends' arguments on these points are without merit.

Turning next to Friends' vagueness arguments, statutes are presumed to be constitutional and "must be upheld unless their unconstitutionality clearly, positively and unmistakably appears" (*Lockheed Aircraft Corp. v. Sup. Ct. of Los Angeles Cty.* (1946) 28 Cal.2d 481). A statute is unconstitutionally vague in violation of due process if it describes the prohibited conduct "in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application" (*Connally v. General Const. Co.* (1926) 269 U.S. 385, 391). "Due process does not require 'impossible standards' of clarity" (*Arce v. Douglas* (9th Cir. 2015) 793 F.3d 968, 988 (quoting *Kolender v. Lawson* (1983) 461 U.S. 352, 361)), or expect "perfect clarity and precise guidance" (*Pickup v. Brown* (9th Cir. 2014) 740 F.3d 1208, 1233-34 (quoting *Ward v. Rock Against Racism* (1989) 491 U.S. 781, 794)). The question is whether the measure is capable of a reasonable and practical construction, and whether "it is clear what the statute proscribes in the vast majority of its intended applications" (*Gospel Missions of Am. v. City of L.A.* (9th Cir. 2005) 419 F.3d 1042, 1047 (citations omitted)). With this understanding in mind, Friends' argument fails because the Commission's EJ Policy does not proscribe any conduct in such a way that the public can be unsure as to whether it is running afoul of the policy. As discussed above, the EJ Policy is meant to provide guidance to the Commission with how to interpret the impacts of development on coastal resources and how those impacts might disproportionately burden different communities.

It is also notable that there do not appear to be any reported cases with litigants successfully challenging the myriad environmental justice policies in California state law as void for vagueness. Further, all the cases cited by Friends for the proposition that the terms "fair treatment" and "meaningful involvement" are unconstitutionally vague are not based on any sort of similar environmental justice policy, any California state law, nor are they even from the federal courts seated in California or from the Ninth Circuit Court of Appeals. The drastically different contexts of these cases, as shown in their citation's parentheticals, belie their inapplicability here.

Turning next to Friends' non-delegation argument, it consists of a legal standard and a conclusory statement as analysis ("Here, Pub. Rec. Code § 30604 has no standards or "safeguards to prevent its abuse" to guide CCC consideration of environmental justice. That violates the nondelegation doctrine, rendering the statute unconstitutional and unlawful. Pub. Res. Code § 30107.3 has the same flaw." Friends Letter at 19-20). Staff disagrees. The Legislature has told the Commission that it "may consider environmental justice, or the equitable distribution of environmental benefits throughout the state" (Coastal Act Section 30604(h)) and then defined "environmental justice" in Coastal Act Section 30107.3 clearly. Further this permissive language is meant to guide the Commission in its application of other more concrete policies, which is precisely what the staff report does.

Friends also claims that even if Coastal Act Section 30604(f) were constitutional, the communities that are being harmed by the activities at the Park "are not principally

Hispanic communities (or any other minority community), and therefore, there is no unfair treatment or burden on that community.” Friends asserts that “the entire basis for CCC’s environmental justice analysis stems from the demonstratively false premise that underprivileged communities are ‘disproportionately’ impacted by OHV use at Oceano Dunes.” The analysis in the staff report on page 108 provides a detailed explanation of how staff defined and identified underserved communities in San Luis Obispo and Santa Barbara Counties to consider in the environmental justice analysis. The tables on pages 113-114 contain U.S. Census data on the demographic make-up of adjacent and downwind communities that speaks for itself. Friends’ analysis introduces another data set of selected Census Block Groups and Census Designated Places in addition to what was used in the staff report, in order to assert that that the communities on the Nipomo Mesa don’t qualify as an environmental justice community. There are several problems with this approach.

First, within every community, there will be block groups that have different demographics than the larger community. But in Friends’ letter, locations are selectively chosen to highlight those who are mostly white and higher income, while disregarding block groups elsewhere in Nipomo and other places in the region affected by the Park activities. This also fails to acknowledge that members of a community are not stationary. Like air and dust, people travel throughout their communities to work, shop, and recreate, and are not confined to the strict boundaries of their Census Block. In this way, community members who may live on one side of town can be still be affected by poor air quality on another side of town.

Second, Friends also selects a proxy for measuring poverty: median value of homes from Zillow.com, which is not an accurate measure for individuals experiencing poverty in the area. Instead, staff uses established statewide and national metrics of income burdens to identify individuals who would qualify for income assistance, such as the percent of population with income that is below 200 percent of the federal poverty level and median household income.

Friends also fails to mention Guadalupe and Santa Maria, which are immediately south of the Mesa, and which are also affected by the dust plume and impacts from the park. Both of these communities have higher rates of poverty, and a greater proportion of their population identifies as non-White than both San Luis Obispo County and the State of California. In addition, the City of Guadalupe, which supports the staff recommendation, is a park-poor community that would see its current level of recreational access reduced by the PWP’s vision for Oso Flaco Lake.

And finally, Friends focuses entirely on the air quality issues as if it were the sole basis for the staff’s EJ analysis. It is not. While it is accurate that more than half of the town of Oceano is outside of the dust plume during prevailing wind events, as detailed in the staff report, Oceano is also burdened by other impacts from the Park, including noise, traffic, trash, crime, lack of safe beach access and economic burdens.

Friends also contends there are a number of EJ terms they do not understand and that are not defined or explained in the staff report such as “underserved community,” “fair

treatment” and “meaningful involvement.” Friends also argues that Section 30107.3(a) does not include a definition of “underserved communities,” and questions the application of “environmental justice” as defined, to “underserved communities.”

The staff report directly references the Commission’s EJ Policy, which was adopted in 2019 after a two-year effort developed with the input from more than 100 environmental justice groups, California Native American Tribes, conservation organization and individual stakeholders, after three public hearings. The Policy includes an opening statement, an implementation plan, a statement of principles and a glossary of terms -- all of which explain EJ principles, basic concepts and regularly used terms such as those mentioned above. The Commission’s EJ Policy and the staff report uses the terms “disadvantaged” “underserved” and “marginalized” interchangeably. It intends to encompass not only the definitions contemplated by SB 1000 (Leyva) (Ch. 587, Stats. 2016), but also to include other low-income communities and communities of color that are disproportionately burdened by or less able to prevent, respond, and recover from adverse environmental impacts. SB 1000 added Government Code Section 65302(h)(4)(A), expanding the definition of “disadvantaged communities” for the purpose of general plans to mean “an area identified by the California Environmental Protection Agency pursuant to Section 39711 of the Health and Safety Code or an area that is a low-income area that is disproportionately affected by environmental pollution and other hazards that can lead to negative health effects, exposure, or environmental degradation.”

The Friends letter also contends that there is plenty of passive recreational opportunity at Pismo Beach, which staff agrees with. When Commission staff wrote on Page 6 of its report that “Here, the beaches fronting the community of Oceano are given over to vehicles, and general non-vehicular beach going activities are thus significantly curtailed,” staff was referring to Oceano Beach and not Pismo Beach. The staff report acknowledges that vehicle access to Pismo Beach ended some 40 years ago, and observes that the city’s economy has expanded as a result.

Finally, staff would like to respond to the Friends’ argument that even though the Commission’s EJ Policy is, in their assessment, “unenforceable,” that the OHV culture itself should be protected under this provision. Friends cites the Webster’s definition of “culture” as “the characteristic features of everyday existence (such as diversions or a way of life) shared by people in a place or time.” This definition of culture is separate from the larger context of environmental justice, which applies to communities and cultures that have been systematically and disproportionately disadvantaged by institutional and structural racism. The environmental justice movement, after all, grew out of the civil rights movement, as an acknowledgement that less affluent communities of color were frequently the dumping grounds for land uses and activities that were unwelcome in wealthier, whiter communities with more access to political power. As such, they were frequently burdened by disproportionate impacts from pollution and lack

of environmental services, such as clean drinking water, clean air, and access to parks and open space.

These communities typically included high percentages of individuals who identify as Black, indigenous and/or immigrants from other countries and cultures who lacked effective representation in government decision making. The purpose of the Environmental Justice movement is to reverse this discrimination by highlighting and remediating long-standing patterns of cultural injustice experienced by these communities.

Using the Webster's definition of culture, virtually any congregation of like-minded people may self-identify as a culture or sub-culture. And while that sort of self-identification is understandable and even desirable from a perspective of social cohesion, group affiliations like "sports culture", "cowboy culture", or "van culture" are not groups that have been historically marginalized. The Commission's EJ policy is intended to bring equity to the historically disadvantaged, not the temporarily aggrieved.

Staff has also heard from some OHV enthusiasts that they live in underserved communities, that coming to Oceano allows them relief from pollution burdens in their home communities, and that rentals provides lower cost coastal recreation. The staff report recognizes this concern on page 112. Providing coastal access for underserved communities is an important aspect of the Commission's public access mandate. However, the information required to determine if OHV activities benefit underserved communities is simply not available. The EJ analyses in the staff report focuses on communities living in the area affected by the Park activities and population characteristics associated with increased vulnerability to environmental hazards such as income and race – not on individuals with a shared recreational activity. Moreover, the purpose of an environmental justice analysis is to look at the historic distribution of benefits and burdens on the identifiable underserved communities impacted by the activities in question.

That said, a State Parks survey of some 900 Park users suggests that the people who are getting greater access to the benefits of OHV recreation tend to be whiter and are wealthier than the nearby communities enduring most of the burdens of OHV activity, which have a larger proportion of lower-income households and people of color. The survey showed that the majority of OHV riders surveyed come from the Central Valley, 57% identified as white, 27% as Hispanic and the median household income was \$115,000.

K. ESHA and Air Quality

As part of their letter, State Parks provided a memorandum from Mr. Will Harris of the California Geological Survey taking issue with many points made in the staff report regarding dune geomorphology and the rationales for making ESHA and air quality findings (see Attachment E of State Parks' letter dated March 12, 2021 titled "Review of Documents Related to the Oceano Dunes State Vehicular Recreation Area and the March 18, 2021 Special Meeting by the California Coastal Commission). However, there are several inaccuracies and misinterpretations in the memorandum provided by Mr.

Harris regarding the ESHA memo and the characterization of the geological and biotic processes that lead to dune surface stiffening and vegetation colonization of dunes.

In his letter, Mr. Harris focuses on a discussion of a 1977 Ingelnook Fen study to discredit the finding that the dunes at Oceano Dunes are ESHA. The letter goes into much detail dismissing the authors of that study as non-geologists, and therefore unable to evaluate the destructiveness of OHVs to dune surface processes. In crafting the ESHA memo, the Commission's staff ecologists included a discussion of the Ingelnook Fen study, not for an exhaustive examination of dune geological processes, but for the purpose of demonstrating that State Parks very deliberately excluded OHVs in another California State Park because of their destabilizing influence on dunes. Given the context of the discussion of the Ingelnook Fen study, the intended purpose of its inclusion is readily apparent. Therefore, Mr. Harris' extensive discussion of any inaccuracies within the Ingelnook study is not relevant to the larger ESHA conclusion of the staff report and ESHA memo. Notably, following the short discussion of the Inglenook study, the very next paragraph of the ESHA memo discusses the processes at work that serve to stabilize coastal dunes surfaces when OHVs are absent. For reference, quoting from the staff reports ESHA memo (page 18) that discussion is as follows:

Several recent studies corroborate the Inglenook Fen report's findings regarding the importance of sand surface stability and the persistence of vegetated dunes. Salt spray, sand, organic and inorganic detritus, seeds of dune plants, and wrack all play a role in stabilizing beach and dune surfaces (Dugan and Hubbard, 2010). The process involves microbes that colonize tidally or via wind-deposited organic debris and secrete sticky polysaccharides that bind sand particles together, yielding heavier sand aggregates that are less subject to entrainment by wind. Over time, these aggregates grow and increase in moisture and nutrient content, girding them further against wind erosion and leading to plant colonization of the beach or dune (Forster and Nicolson, 1981; Forster, 1979). The coastal strand and foredune plant roots and fungal hyphae contribute to sand stabilization both physically and via chemical secretions; plant canopies additionally intercept blowing sand, initiating formation of hummocks and foredunes. All of these processes are interrupted by street legal vehicle and OHV use.

The Commission's ecologists stand by this description, which has been described more fully in earlier memos specifically regarding air quality. Further, the 1977 Ingelnook Fen document is not "the primary reference for Coastal Commission staff" as Mr. Harris asserts. Although Coastal Commission staff have written on the air quality issues at Oceano Dunes in several previous memos and communications, we have not previously cited this document.

Further, in his letter, Mr. Harris states that "To justify ESHA designation for the entirety of Oceano Dunes, the CCC staff report and Exhibit 9 draw repeated parallels to the Inglenook Fen study." This is an exaggeration. The staff report and ESHA memo (Exhibit 9) do not rely heavily on the Inglenook Fen study in making the ESHA determination. The study was briefly discussed (page 95 of the staff report, and pages

17 and 18 of the ESHA memo) for the reasons described above. The ESHA determination was based on numerous lines of evidence including:

1. Oceano Dunes is an integral component of the nearly 22,000 acre Guadalupe-Nipomo Dunes Complex that is widely recognized as one of the largest and most unfragmented dune ecosystems on earth.
2. Intact beach and dune ecosystems are among the rarest ecosystems on earth.
3. Oceano Dunes contains an array of interconnected habitats including sandy beach, coastal strand, central foredunes, back dunes, dune sheets, dune swales, lakes, and creeks.
4. The array of interconnected habitats support rare vegetation communities that in turn support hundreds of species of plants and animals, many of which are rare and some that are endemic (found nowhere else in the world). The habitat connectivity is one of the most important factors accounting for the high biodiversity found at Oceano Dunes.
5. The habitats and plant and animal species found at Oceano Dunes are easily disturbed by human activities and development including street legal and OHV use, beach grooming, introduction of invasive species, and climate change.

Finally, there are several inaccuracies and misinterpretations in Mr. Harris' memorandum regarding the staff report's characterization of the geological and biotic processes that lead to dune surface stiffening and vegetation colonization of dunes. Notably, none of Mr. Harris' comments directly address the larger point of the discussion which is to illustrate the destabilizing influence of OHVs on dune surface processes which make them more emissive and lead to the particulate matter generation and poor air quality downwind of the Park.

Friends of Oceano Dunes asserts that dust control measures, such as vegetation on dunes, will cause more take of endangered species than allowing thousands of OHV riders to ride through designated critical habitat areas. In fact, the Commission's staff biologist, Dr. Laurie Koteen, has analyzed this assertion and finds it unsupported by the evidence. There is a substantial body of scientific literature concluding that OHV use significantly disrupts habitat of endangered species, and that restoration efforts, including vegetating dunes, will not degrade ESHA or significantly disrupt habitat values of ESHA (Staff Report, Exhibit 9, pages 17-19, Staff Report for CDP 3-12-050 pages 24-29, Addendum to CDP 3-12-050 and 3-12-050-A-1, page 4).

L. Economic Impacts

The staff report evaluated economic issues, including the potential economic impact of the staff recommendation, not because it is particularly germane for Coastal Act/LCP conformance, but rather for eyes-wide-open decision-making given that economic concerns have been an issue that the public, local jurisdictions, and State Parks has raised over the years. As such, staff felt it important to understand the issues for full transparency purposes. And as discussed beginning on page 163 and further discussed

in Dr. Phil King's economic analysis in staff report Exhibit 13, the staff recommendation should not result in any sort of precipitous economic decline for the region. While it is true that some OHV-specific businesses would need to modify their business models to cater to non-OHV users, different users would come to the Park and the Park would remain an important visitor attraction, including for families seeking a lower-cost beachfront attraction and who may camp at the Park or stay in area hotels. This potential for a different economic model has been cited by various local officials in discussions with them regarding a new vision for the Park that successfully economizes its offerings in a more environmentally sustainable manner.

M. PWP

Finally, on page 2 of its letter State Parks indicates that the Commission and State Parks agreed that a PWP was the appropriate vehicle to address coastal resource concerns at the Park, and that taking an action as recommended by Commission staff will unfairly preempt and prejudice that ongoing effort. Respectfully, staff and the Commission have historically said that yes, a PWP is a vehicle that can be used to address coastal resource concerns at the Park, but did not suggest that it was the *only* vehicle for doing so. And perhaps as important, and as evidenced by the staff report and this addendum, the draft PWP provides a vision for the Park that doesn't actually address the legal and coastal resource concerns as directed by the Commission, the base CDP, the Coastal Act, and the LCPs. And, contrary to Parks assertions, a Commission action as recommended by staff is fundamentally a required course correction for the PWP, including to help provide the relevant Coastal Act and LCP sideboards for further PWP development, including to do so in a timely manner so as to avoid State Parks spending significant time, money, and effort pursuing a PWP that cannot be approved under the Coastal Act and the LCPs here. That doesn't reflect acting in a "preemptive manner that favors a pre-determined and exclusionary outcome" as State Parks suggests. On the contrary, it is simply good planning and public policy to provide clear direction from the body that implements the Coastal Act, namely the Commission. This allows Parks to have early input with which to evaluate the content of its subsequent PWP document, including to make changes as directed by the Commission to allow for an approvable PWP to be developed.

Typographical Oversights

The staff report is modified as shown below (where applicable, text in underline format indicates text to be added, and text in ~~strike through~~ format indicates text to be deleted):

- a. All references to the "Yak Tityu Tityu Northern Chumash Tribe" are changed to "Yak Tityu Tityu Yak Tilhini Tribe of indigenous Northern Chumash".
- b. On staff report page 5, the following changes are made: "The byproducts of vehicular/OHV use also directly affect underserved communities adjacent to the Park, not only due to dust and its associated air quality and public health problems, but also due to the effect that the beach and dune degradation associated with such uses has on these communities' environment and economic prosperity. These impacts are felt particularly strongly in the community of Oceano, directly inland of the Park, which is approximately half Hispanic/Latino and about a third (32%) of its

population have an income less than two-times the federal poverty rate. In fact, the vehicular/OHV use at the Park raises a classic environmental justice question of who benefits from and who bears the burden of such use. People from all backgrounds enjoy the Park, including those who come from EJ communities. But this does not provide justification for continued OHV use in the dunes, because the activity itself is what is causing the disproportionate burdens to the local underserved communities regardless of who undertakes them. The benefits of recreation to one group do not mitigate the burdens of pollution stemming from recreational activities on other underserved communities. Here, ... And perhaps most notable, Oceano is the first inland community affected by the dust generated at the Park, followed more seriously by the unincorporated community of Nipomo...

- c. On staff report page 6, the following changes are made: "...For example, the elimination, or at least significant reduction, of air quality problems by itself is a critical public health objective for downwind communities, but it can also have a significant positive impact on the prosperity of ~~these~~ inland communities too. ..."
- d. On staff report page 25, the following changes are made: "...and all vehicular, OHV and camping operations south of the creek (when allowed) shall cease when the creek flows to the ocean ..."
- e. On staff report page 51, the following changes are made: "...Section 30240 does not allow development in ESHA even if the impacts ~~to~~ of that development will be offset or mitigated elsewhere. ..."
- f. On staff report page 53, the following changes are made: "...However, vehicles are not allowed in the dunes inland of that flatter beach section, anywhere north of West Grand Avenue, in the intertidal area (i.e., the portion of the beach seaward of the ~~mean~~ high tide line), ... extending south about one-third of a mile from West Grande Avenue to the City limits."
- g. On staff report page 65, the following changes are made: "As described above, the LCP already makes clear that terrestrial habitat ESHA encompasses the almost the entirety of the Park, ..."
- h. On staff report page 70, the following changes are made: "As described earlier, the County owns almost all of the over 900 ~~almost 600~~-acre La Grande property, ..."
- i. On staff report page 111, the following changes are made: "Conversely, OHV proponents raise concerns regarding impacts to their culture and traditions if their use of the only State Parks' vehicular recreation area on the immediate coast of California were further restricted or prohibited. ..."
- j. On staff report page 120, the following changes are made: "OHV enthusiasts have said the Commission should protect their unique recreational use just as the agency protects other recreational uses along the coast, particularly since OHV/vehicular use and camping in beaches and dunes is only allowed in State Parks on these six miles of coastline in the entire state. ..."

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- k. On staff report page 174, the following changes are made: "...The beach area near Oso Flaco, about a 2 miles or so, could continue to be available for more remote type of beach access. ..."