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**Prepared February 16, 2021 for March 18, 2021 Hearing**

**To:** Commissioners and Interested Persons

**From:** John Ainsworth, Executive Director  
Dan Carl, Central Coast District Director  
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**Subject: Oceano Dunes Coastal Development Permit 4-82-300 Review**

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## REPORT SYNOPSIS

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

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

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

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

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

## SUMMARY OF REPORT AND STAFF RECOMMENDATION

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

### **CDP review**

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

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

### **ESHA protection**

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

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

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

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

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

### **Air quality and public health**

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

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

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

### **Environmental and tribal justice**

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

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

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

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

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

### **Planning and permitting**

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

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

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

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

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

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

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

### **State Parks' draft PWP**

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

### **Coastal Act and LCP sideboards**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Staff recommendation**

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

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

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

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



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

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

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

## Conclusion

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

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

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

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

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

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

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

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**APPENDICES**

Appendix A: Substantive File Documents

Appendix B: Staff Contact with Other Agencies and Groups

**EXHIBITS**

- Exhibit 1: Oceano Dunes Location Maps and Figures
- Exhibit 2: Oceano Dunes Photos
- Exhibit 3: CDP 4-82-300 Conditions (as amended through 4-82-300-A5)
- Exhibit 4: Coastal Act and LCP Provisions
- Exhibit 5: Public Resource Code Section 5090 (OHV Laws)
- Exhibit 6: San Luis Obispo County Air Pollution Control District Rule 1001
- Exhibit 7: Dust Plume Photos
- Exhibit 8: Resource Agency Comments (USFWS, CDFW, NOAA Fisheries)
- Exhibit 9: Staff 2021 ESHA Analysis
- Exhibit 10: Staff 2021 ESHA Map for the Park
- Exhibit 11: Notice of Commission’s July 2019 Action on CDP 4-82-300 (July 23, 2019)
- Exhibit 12: Coastal Commission direction to State Parks (July 12, 2019)
- Exhibit 13: Third-Party Review of State Parks Oceano Dunes Economic Analysis
- Exhibit 14: Public Comments Memorandum
- Exhibit 15: State Parks’ Draft Public Works Plan (PWP)

**CORRESPONDENCE**

**EX PARTE**

## 1. Staff Recommendation

### A. Staff-Recommended Motion and Resolution

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

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

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

### B. Staff-Recommended CDP Special Conditions

**Note:** All standard conditions are retained, but all special conditions of CDP 4-82-300, up to and including as modified through CDP amendment 4-82-300-A5, shall be eliminated and replaced with the following:

1. **Five-Year Transition.** Beginning March 19, 2021, authorized uses and intensities of use at the Park (the boundaries of which are shown in Exhibit 1) shall be modified as described herein, including phasing out OHV uses over five years, and modifying areas within which street-legal vehicle use and camping are allowed:
  - a. **OHVs.** Beginning on January 1, 2026, and continuing thereafter, OHV use shall be prohibited at the Park. State Parks may eliminate such use before that date if it so chooses. State Parks may also phase out OHV use over this approximately five year period, including by progressively reducing the areas open to OHV uses. For example, State Parks may reduce the southern extent of the OHV use boundary by a mile each year, eliminate/reduce OHV use in the La Grande property earlier, or apply other similar approaches.
  - b. **Street-Legal Vehicles.** Beginning on January 1, 2026, and continuing thereafter, street-legal vehicles (other than State Parks/emergency responder vehicles) shall be prohibited at the Park except within the beach area between the seaward extensions of West Grand and Pier Avenues (i.e., between lines perpendicular to the shoreline from the upcoast edge of West Grand Avenue to the upcoast edge

of the parking lot at the seaward end of Pier Avenue). State Parks may reduce or eliminate street-legal vehicle use in other areas of the Park before that date if it so chooses, including through phased reductions in allowed street-legal use areas or other similar approaches.

- c. **Beach Camping.** Beginning on March 19, 2021, and continuing thereafter, and in addition to existing beach camping areas south of Post 2, vehicular and bike-in/hike-in beach camping shall be allowed in the same beach area between West Grand and Pier Avenues as the area in which street-legal vehicles are allowed. Beginning on January 1, 2026, and continuing thereafter, beach camping in the Park shall be limited to that area.
- d. **Other Public Recreational Access.** Free general public recreational access (e.g., for beachgoing, hiking, birdwatching, fishing, equestrian pursuits, etc.) shall continue to be allowed throughout the Park. In addition, low-intensity interpretive facilities/activities may be allowed on the beach and in the dunes south of Arroyo Grande Creek subject to Coastal Commission authorization (e.g., remote hike-in/bike-in camping, etc.).

All above uses shall occur outside of fenced restoration, habitat enclosure, and other protected areas, including as new such areas are added (see Exhibit 1 for such areas as of March 18, 2021), and all vehicular uses shall only occur above the mean high tide line. State Parks shall modify the Park as necessary to meet the above requirements, including to provide information to users regarding allowable use areas, and grading, fencing/barriers, signage, and related support facilities, such as relocated restrooms.

- 2. **Pier Avenue Entrance.** By July 1, 2021, the Pier Avenue vehicular entrance shall be eliminated, and the area restored to a natural shoreline edge with bike-in/hike-in and equestrian access and typical beach area public access amenities (e.g., overlooks, benches, picnic tables, etc.), where all such changes shall be seamlessly integrated with State Parks facilities and property near the end of Pier Avenue (e.g., the parking lot and restroom).
- 3. **Other Operational Changes.** Beginning on March 19, 2021, and continuing thereafter, authorized uses and intensities of use at the Park shall be subject to all of the following requirements:
  - a. **Restricted Use Areas.** All fenced restoration, habitat enclosure, cultural resource, and other protected areas shall be off-limits to all forms of access (see Exhibit 1 for such areas as of March 18, 2021), and all areas below the mean high tide line shall be off-limits to all vehicular forms of access.
  - b. **Plover and Tern Habitat Restrictions.** Areas occupied by and/or providing habitat for western snowy plover and/or California least tern shall be protected at a minimum as follows:

1. **Permanent Enclosure Area.** The approximately 300-acre seasonal snowy plover and least tern habitat enclosure shall be made permanent and in effect year-round.
  2. **Seasonal Restrictions.** Between March 1st and September 30th, the beach and foredune area extending south of Mile Post 4 to the northern edge of the permanent enclosure shall be fenced off for plover and tern protection and all other uses prohibited therein as follows: (a) between March 19, 2021 and January 1, 2026, the fenced area shall encompass the seaward side of the 48-acre restoration area (including all areas seaward of the restrooms) and all areas between it and the northern edge of the permanent enclosure; and (b) beginning on January 1, 2026, and thereafter, the fenced area shall encompass all beach and foredune areas from Mile Post 4 to the northern edge of the permanent enclosure (see Exhibit 1). Seasonal fencing during this same time frame shall also be installed in the backdunes of the South Oso Flaco Lake area as shown in Exhibit 1.
  3. **Other Restrictions.** If any plovers or terns are found nesting in allowable OHV, vehicle, camping, and/or other access areas, then the nests shall be immediately surrounded by appropriate protective fencing that is at least 150 meters (492 feet) in radius for plover and at least 300 meters (984 feet) in radius for tern. This fencing shall be designed to account for protection from predators and accompanied by any additional fenced areas needed to ensure continued safe access to adjacent and/or nearby feeding and/or breeding areas, and shall also be accompanied by any other necessary predator management measures. The fencing and any other measures shall remain in place until the chicks have been successfully fledged and/or nesting surveys document that the nests have been naturally abandoned. In addition, when there is evidence of breeding behavior or efforts to establish nests (e.g., plover scrapes, tern nests, etc.), such fencing shall also be erected around these areas subject to the same dimensions, and such additional necessary predator management measures also applied. In this case, the fencing shall remain in place until chicks have been successfully fledged and/or nesting surveys document that the nests were naturally abandoned or were not successfully established after initial attempts.
- c. **Dune Restoration.** Dune restoration and protection of ESHA to address coastal resource degradation associated with overuse (e.g., for permanent dust control purposes) shall be allowed in all dune areas, including in identified use areas.
  - d. **Nighttime Vehicular Use Prohibited.** With the exception of emergency vehicles and public safety needs, all vehicular activity within the Park shall be prohibited during nighttime hours (i.e., from one-hour after sunset to one-hour before sunrise).
  - e. **Arroyo Grande Creek Crossing Restrictions.** With the exception of emergency vehicles and public safety needs, vehicular crossings through Arroyo Grande



Creek shall be prohibited, and all OHV and camping operations south of the creek (when allowed) shall cease when the creek flows to the ocean (i.e., when there is a hydraulic connection between the creek/lagoon and the ocean). State Parks shall regularly monitor the creek so as to ensure that users are not allowed to cross to the southern side of the creek area when the creek may soon connect to the ocean. State Parks shall ensure that there is sufficient time for users then south of the creek area to exit the Park before the creek will connect to the ocean.

- f. **Use Limits.** At most, the following maximums are allowable within the Park at any one time for each time period identified:

Time period	Street-legal vehicles	Campsites	OHVs
3/19/2021 – 1/1/2026	1000	500	1000
1/1/2026 and thereafter	500	500	0

Each street-legal vehicle that stays overnight counts as one campsite (and does not count toward the street-legal vehicle maximum), as does up to six people for a bike-in/hike-in camping group. Exceptions to the maximum use limits, including on holiday weekends, shall be prohibited.

- g. **Grading and Fencing.** Grading demonstrated to be necessary to accommodate Park uses (including that which is necessary for the installation, repair, and maintenance of fencing/barriers, restroom facilities, and basic Park operational needs) shall be allowed, provided it is demonstrated to be undertaken in a manner that protects the beach, dunes, watercourses, public recreational access, and public views to the maximum extent feasible. Beach grooming, grading within fenced restoration, habitat enclosure, other protected areas, or below the mean high tide, and any grading not associated with normal Park operations and maintenance, shall be prohibited.
- h. **Trash/Recycling.** All trash and recycling receptacles shall be covered to control trash and recyclable materials and to help reduce attracting predators.
- i. **Special Events.** Music festivals, concerts, and other special events shall require separate CDP authorization, unless the Executive Director determines that no such CDP authorization is legally required.
- j. **Access and Outreach.** State Parks shall implement measures to maximize use of allowed Park use areas by lower-income, youth, and tribal entities (including people who might not normally be reached through traditional and local means, such as inland communities), including by identifying venues to advertise and increase awareness of such available uses (e.g., Park website, press release, calendar listings, ads on radio, print ads, social media (including Facebook, Twitter, and Instagram), etc.).

4. **Monitoring.** By December 31, 2021, and annually thereafter, State Parks shall submit for Executive Director review and approval a report documenting the means of implementing, and information demonstrating compliance with, the terms and conditions of this CDP, including clear information regarding any actions taken under this CDP authorization. Minor adjustments to the above requirements that do not require CDP authorization (as determined by the Executive Director) may be allowed by the Executive Director through such approval if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources.

## 2. Background

### A. Park Location and Description

The California Department of Parks and Recreation (State Parks or DPR in this report) 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<sup>1</sup> (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).<sup>2,3</sup> The Park

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<sup>1</sup> The La Grande property was originally subdivided into approximately 6,700 individual 3,500-square-foot lots in 1905. None of the streets or infrastructure were ever built and the majority of the lots were never sold. Much of the subdivision came under County ownership in 1944 and the County now owns approximately 935 acres. There are also approximately 41 private inholdings within the La Grande property, many of which were purchased by their current owners after the Park had long been established. While the County believes that the underlying subdivision was legal, the Commission has not independently confirmed the legality of the remaining private inholdings. And although State Parks has represented that it is leasing the La Grande property from the County, the lease expired in 2009, and the County indicates that State Parks does not currently have any sort of contract with the County to use the land. In any case, State Parks has represented over the years that all of these properties, both publicly and privately owned, constitute portions of the Park and are therefore governed by CDP 4-82-300.

<sup>2</sup> Because the area affected by this report includes portions of these two State Park units (extending south from West Grand Avenue in Pismo State Beach in Grover Beach to the southern end of Pismo State Beach/ODSVRA where it borders the Guadalupe-Nipomo Dunes National Wildlife Refuge) and also the County’s La Grande property, Phillip 66’s buffer property, and the Union Oil properties, the affected area is referred to herein as “the Park” for ease of reference.

<sup>3</sup> Some have argued that the fact that nearly the entire shoreline of the Park is actually part of Pismo State Beach, and *not* part of the designated SVRA, means that vehicles are not allowed on the Pismo State Beach portion of the Park area. Some have also argued that the vehicles should also not be allowed on the La Grande property because it is not subject to a lease or other sort of contract that would legally allow its use by State Parks, and thus not a part of the SVRA (i.e., State Parks cannot designate a third-party’s land as an SVRA). Those issues are relevant and deserve analysis; however, State Parks has operated the SVRA within portions of the Park since its inception and purports to have the legal authority to continue to manage the Park under the terms and conditions of the 1982 CDP. This report

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 4,750 Park acres (for comparison, the Park 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.<sup>4</sup>

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>5</sup> and 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 provides a unique public recreational access opportunity, and it 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.<sup>6</sup> 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,<sup>7</sup> 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

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therefore recognizes that the Commission has permitted State Parks to operate the Park on this land and has temporarily allowed vehicular use on portions of it through its 1982 CDP that is the subject of this review, and thus the Commission has always evaluated all of the Park in that context, and that framework forms the baseline for this review. Independently, it may well be that State Parks is required to designate portions of these two State Parks units differently to allow vehicular use, and it may well be that they do not have the authority to designate third-party property in that way, but these are issues to be resolved by State Parks in the one case, and by State Parks in tandem with the County and other owners in the other. While good context for the Commission's evaluation here, these issues need not be resolved for the Commission to undertake its CDP review under the Coastal Act and the applicable LCPs.

<sup>4</sup> Street legal vehicles are allowed access to the six miles of beach extending south from West Grand Avenue, and OHVs and camping are allowed along roughly 4.5 miles of beach and in about 1,300 dune acres total (or over 2 square miles) of the Park.

<sup>5</sup> Including by the Nature Conservancy, see: <https://www.nature.org/en-us/get-involved/how-to-help/places-we-protect/guadalupe-nipomo-dunes/>.

<sup>6</sup> DPR indicates that the five-year average for visitation (i.e., 2015-2019) was 1,434,833 people per year, and that the Park was accessed by some 264,042 street-legal vehicles and 142,376 off-highway vehicles (over 400,000 vehicles in total) in 2013.

<sup>7</sup> See Coastal Commission Staff Ecologists' memo on this point in Exhibit 11.

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.<sup>8</sup> As a result, there has historically been a great tension over how to strike an appropriate balance between providing for vehicular recreation and protecting dune and related coastal resources consistent with CDP, Coastal Act, and LCP requirements.

There are two interim<sup>9</sup> vehicular entry points for the Park. The northernmost entrance (and the northern boundary for allowed vehicular use of any kind on the beach) is at West Grand Avenue within the City of Grover Beach (see **Exhibit 2**). The second entrance is located just over one-mile south of West Grand Avenue at Pier Avenue within the unincorporated community of Oceano. From both entry points, street-legal vehicles then drive approximately two miles south along the lower beach towards the interim<sup>10</sup> OHV staging and allowed riding areas (see staging and riding areas noted on **Exhibit 2**). In order to get to the OHV staging and riding areas, vehicles must cross Arroyo Grande Creek where it empties into the Pacific Ocean, approximately one-half mile south of Pier Avenue. Arroyo Grande Creek is a perennial stream that supports Steelhead trout and Tidewater goby, both of which are listed species under the Federal Endangered Species Act (ESA).<sup>11</sup> Typically, the only time the Creek has significant flows across the beach is during the rainy season (e.g., during winter/spring times). Other times of the year, it tends to terminate in a lagoon inland of the immediate shoreline. However, when it is flowing, the Creek presents an obstacle to vehicular

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<sup>8</sup> State Parks' draft PWP materials also recognize the Park's ecological significance. Draft PWP Volume 1 page 4-121 states: "Several sources identify the Guadalupe-Nipomo Dune Complex as "one of the largest coastal dune landscapes along the west coast of North America". A portion of the dune complex was designated in 1974 as the Nipomo Dunes-Point Sal Coastal Area Natural National Landmark, an area that contains "the largest, relatively undisturbed coastal dune tract in California, and is one of the last remaining tracts of pristine rocky coastline in the South Coast Ranges." Though these descriptions vary slightly, they generally identify the Guadalupe-Nipomo Dune Complex as a unique coastal dune landscape with few, if any, parallels in size and value." Similarly, Draft PWP Volume 1 page 1-17 states: "The USFWS ranked the dune complex number one of 49 important California habitats worthy of preservation."

<sup>9</sup> When the Commission approved CDP 4-82-300 in 1982, it designated temporary and interim entrance locations, and required that DPR study and the Commission approve a permanent entrance system no later than 18 months after certification of the County's LCP Land Use Plan (LUP, which was certified in 1984), in part to allow consideration of potential alternatives to vehicular access for the Park to avoid adverse coastal resource impacts (see Special Condition 1(b) in Exhibit 3). Although DPR has studied alternatives in the past, and has independently determined that the entrances are permanent, the Commission has never taken action to finalize Park access and staging through the CDP and the LCP as required. As such, there have been repeated complaints about the temporary and interim nature of the existing system and its impacts (e.g., to non-vehicular recreational beach use and to Arroyo Grande Creek habitat resources, etc.), and this continues to be an over three-decade old issue and violation of the CDP. See also violation findings in the planning and permitting section of this report.

<sup>10</sup> Id (the staging areas are also temporary and interim in the same way as the entrances are temporary and interim under CDP 4-82-300).

<sup>11</sup> South Central Coast steelhead are listed as threatened, and tidewater goby are listed as endangered.

travel, including to get to the OHV riding and staging areas to the south, and has been the site of coastal resource impacts as vehicles attempt to navigate through and across the flowing Creek to access Park riding and camping areas further south.

Continuing south, vehicles reach the above-described interim OHV staging area, which is just south of Arroyo Grande Creek at Post 2<sup>12</sup> (see location of marker posts in **Exhibit 2**). This staging area is the designated area where OHVs that have been trailered in by other vehicles are first allowed to be off-loaded and ridden (i.e., the OHV riding area). OHVs may be off-loaded in other areas south of the staging area, but the staging area at Post 2 is the location where OHV use is first allowed as one heads south from the interim entrance points. OHV riding is allowed in much of the Park area south of Post 2 (the OHV riding area extends along roughly 4.5 miles of the immediate shoreline, and extends approximately 2 miles inland in the dunes), much of which is accessed via the 'sand highway',<sup>13</sup> and street-legal vehicles can range essentially along the 6-mile stretch of the Park south of West Grand Avenue (with the last roughly two miles to the south and nearest the National Wildlife Reserve off limits to all forms of vehicular and OHV use).

As indicated, the Park includes the County's La Grande property that stretches from near Arroyo Grande Creek to Post 7, extending along approximately 2.5 shoreline miles (see **Exhibit 2**). The La Grande property occupies 935 acres of the Park (or about 20% of all Park acreage), where a portion of that area is protected ESHA that is off-limits to vehicles and OHVs (some 291 acres), but most of the County acreage is located in and around the riding area (extending roughly between Posts 4 and 7). In fact, the County's property actually makes up about a third of the overall riding area at the Park (i.e., 437 acres out of the 1,306-acre riding area).<sup>14</sup> Although at one time DPR leased this area from the County on a month-to-month basis, there is no lease or other arrangement for State Parks to use the La Grande property at the current time. And although the Park, and at least the OHV riding area, is sometimes called out as the SVRA, almost half of the OHV riding area is actually located in Pismo State Beach (157 acres) and the County's La Grande property.

A portion of the Park's riding area is closed to OHV use for 7 months out of the year for habitat purposes. Specifically, DPR installs and maintains fencing that restricts vehicular

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<sup>12</sup> The Park includes eight such posts, where each is located approximately one-half mile apart, that are used as locational reference points within the Park.

<sup>13</sup> The 'sand highway' is a series of marker posts that head inland from the beach at Post 4 to the backdune area and then run south through the backdunes. The purpose of the sand highway is to provide a reference for vehicles traveling through the back dunes.

<sup>14</sup> This 437 acres is a subset of the 644 La Grande acres previously referenced as being in the area managed by State Parks for OHV activities, where the 644 acres is within the fence line, but the 437 acres is only the areas where OHV use is actually allowed, and excludes a series of protected dune areas within the 644 acres totaling some 200 acres (including areas that were restored by State Parks to address dust issues) The County also owns about 5 acres of property that is discontiguous to the La Grande property near the mouth of Arroyo Grande Creek in the area where vehicular creek crossings occur.

and OHV use to protect nesting California least terns and western snowy plovers (both of which are ESA-listed species)<sup>15</sup> along the southernmost portion of the riding area along the shoreline and covering an area of approximately 300 acres from March 1st to September 30th each year. This seasonal nesting enclosure area is referred to as the 'southern enclosure' (see **Exhibit 2**), and is otherwise open to vehicles and OHV use the other 5 months of the year (other than vegetated islands within this area) extending from approximately Post 6 south to Post 8 and the Oso Flaco Lake area. Although the basic configuration of the seasonal southern enclosure has remained relatively consistent since 2004, changes in dune topography and public safety concerns inform the seasonal placement of the inland fence, resulting in small variations in acreage from year to year.

Just south of the southern enclosure area and the open riding area is the Oso Flaco Lake area, which includes Oso Flaco Lake itself, Little Oso Flaco Lake, and Oso Flaco Creek that all combine to form a rich lake, wetland and riparian habitat tapestry (see **Exhibit 2**). The Oso Flaco Lake area was historically open to riding, but, due to severe resource degradation, was closed off to vehicular and OHV use and was required to be restored by the Coastal Commission through CDP 4-82-300 in 1982. This area now supports a healthy system of distinct habitats, including freshwater lakes and marsh, a significant riparian system, dune vegetation, and coastal sage scrub. Multiple special status species are found in this area, including California red-legged frog, which is federally threatened and a state species of special concern, as well as two extremely rare and endemic plants, marsh sandwort and Gambel's watercress, both of which are listed as endangered under both Federal and State ESAs, and that otherwise only exist at one other location in the world. In other words, the Oso Flaco Lake area is a very important habitat area within the Park, within which only lower key and more passive forms of less intensive recreation are allowed per the CDP, and a small parking lot and pedestrian-only access point is located at the end of Oso Flaco Lake Road.

In addition to vehicular recreation, the entire Park (other than protected sensitive resource areas) is open to other forms of use, including general beach use, fishing, hiking, equestrians, and bird-watching (the latter especially popular in the Oso Flaco Lake area). These other public recreational uses, however, tend to be overtaken by the vehicular uses that predominate the Park, including because there is a basic level of incompatibility between vehicular recreation and these other forms of recreation, which tend to be displaced by vehicles. In addition, camping is allowed on the beach and dunes in all areas where vehicles are allowed, and RV and car camping is very popular, taking place almost exclusively in the prime flatter beach camping area between Post 3 and Post 4.5 (i.e., along roughly three-quarters of a mile of beach) nearest the shoreline.

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<sup>15</sup> California least tern are listed as endangered under both the Federal and State ESAs, and western snowy plover are federally-listed as threatened.

See site location maps, figures, and photos of the Park area in **Exhibits 1, 2, and 3** respectively.

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

The San Luis Obispo County LCP Land Use Plan (LUP) was originally adopted by the County in 1981. At that time, the County's LUP proposed to close the entire Park to vehicle use and camping unless and until a management plan was submitted by DPR and approved by the County. The identified management plan was intended to be the vehicle to address coastal resource management in relation to vehicle impacts at the Park. However, in considering the proposed LUP, the Coastal Commission<sup>16</sup> found that the LUP's proposed policies and standards related to vehicular and OHV use did not adequately protect ESHA, and thus the LUP was not approved at that time. In denying the LUP, and in addition to the issues associated with vehicular uses in ESHA, a main area of Commission concern was appropriately locating Park access points and OHV staging areas in order to reduce known adverse coastal resource impacts from vehicular use, including with respect to impacts on non-vehicular recreational beach use in the more northerly part of the Park, and with respect to concerns about Arroyo Grande Creek habitat resources. At the LUP hearing, the Commission directed staff, the County, and State Parks to develop a solution for these access and other issues. Thereafter, the agencies worked together with other interested parties to evaluate and develop strategies that might be able to address the core issues raised regarding continued vehicular use (including OHV and camping uses) on the beach and in the dunes, and the manner in which that might be accommodated while also protecting coastal resources.

Ultimately, there were no definitive decisions nor agreements about that core dilemma from nearly 40 years ago, which ultimately continues to the current day. Rather, what the parties *did* agree to was that they did not want to delay the entire LUP/LCP certification over the issue.<sup>17</sup> So instead, and to avoid full closure of the Park to vehicular use as proposed by the County through its LUP/LCP, State Parks applied for and the Commission approved CDP 4-82-300 to temporarily define basic operational parameters for the Park in 1982. Importantly, and in large measure because of the context in which it was derived, CDP 4-82-300 was structured *not to* permanently codify Park use parameters; rather, it was structured to identify interim and temporary allowed use and intensity of use parameters. These intensity limits and parameters particularly related to how the Park was accessed by vehicles, and the CDP set in motion a series of requirements to help resolve issues regarding potential appropriate and allowable locations and intensities of vehicular use at the Park. The conceptual framework

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<sup>16</sup> At that time, the South Central Regional Coastal Commission. As part of Proposition 20 (the "Coastal Initiative" of 1972) and the Coastal Act (of 1976), there were originally six separate regional Coastal Commissions in addition to a statewide Commission. The regional Coastal Commissions were ultimately phased out to leave just one statewide Coastal Commission in 1981. The LUP was considered by the regional Commission just before that 1981 transition.

<sup>17</sup> The LUP was subsequently certified in 1984, and the LCP's Implementation Plan (and thus the overall LCP) was certified in 1988.

underpinning the CDP approval was to allow the LUP and LCP to be certified following approval of the interim measures under the CDP. Park operational parameters were expected to be updated moving forward in the LCP so that the LCP could be applied to CDP decisions related to Park use and intensities of use.<sup>18</sup>

Specifically, CDP 4-82-300 authorized interim Park entrances (and the construction of two interim kiosks at the two entry locations), designated an interim OHV staging area, and set interim vehicle use limits.<sup>19</sup> The CDP was approved with the intent that these interim use parameters would be temporary to allow time for the Commission, the County, State Parks, and other interested parties to come to some agreement on the level and location of potential use intensity that would ultimately be allowed consistent with protection of coastal resources. For example, CDP 4-82-300 states:

*Because the issue is extremely complex it is not possible to identify a program which would effect all the necessary remedies immediately...[and because CDP authorization is] the initial integral phases of...DPR's longer term program to manage OHV use within the park units consistent with the access, recreation and resource protection policies of the Coastal Act (PRC Sections 30210, 30240, 30231)... it is therefore appropriate and necessary that the specific elements of said program be incorporated as conditions of permit approval.*

Importantly, the CDP also was structured that if final decisions were not made within the specified time frames (all within the mid-1980s), then the permit would “be subject to review and modification if necessary or appropriate” by the Commission (see base CDP 4-82-300 Special Condition 1(b) on page 1 of **Exhibit 4**). The CDP also established the required annual review process, which specified that:

*If...OHV use within [the Park] is not occurring in a manner which protects environmentally sensitive habitat and adjacent community values consistent with the requirements of the San Luis Obispo County Local Coastal Program Land Use Plan, then OHV access may be further limited pursuant to the access and habitat protection policies of the County certified Land Use Plan.<sup>20</sup>*

In short, the original CDP was structured to allow the Commission to ‘review and modify’ Park operational parameters if certain conditions were not complied with, and they have not to date been complied with. The CDP also allows the Commission through the annual CDP review process to make changes to Park operational and management

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<sup>18</sup> And the certified LCP includes applicable policies that reference CDP 4-82-300 in this regard.

<sup>19</sup> The Commission also denied DPR’s proposal to place a third interim access kiosk and entrance at the causeway across Oso Flaco Lake (see Special Conditions 1 and 2 of base CDP in Exhibit 4), and otherwise required that vehicular use cease near the Oso Flaco Lake ecosystem, and that the fronting dunes there be restored.

<sup>20</sup> See base CDP 4-82-300 Special Condition 6 on pages 4 and 5 of Exhibit 4.



parameters for the protection of coastal resources, as required for LCP and Coastal Act consistency.<sup>21</sup>

The CDP has since been amended five times, the most recent of which was in 2001 (see **Exhibit 4** for the changes each amendment made to the conditions of the CDP, including a clean copy of the current conditions as amended starting on page 38 of the exhibit). Importantly, that 2001 Commission action updated the interim use parameters, which have not changed since (see Special Condition 3 of CDP Amendment 4-82-300-A5 on pages 34 and 35 of **Exhibit 4**), and which allow up to 2,580 street-legal vehicles per day, up to 1,000 camping street-legal vehicles per day, and up to 1,720 OHVs at any given time, where the street-legal vehicle and OHV standards are allowed to be exceeded on Memorial Day, Fourth of July, Labor Day, and Thanksgiving weekends and holidays.<sup>22</sup> At the same time, that 2001 action also directed a newly established Technical Review Team (TRT)<sup>23</sup> to evaluate how best to manage the Park given the inherent conflicts between vehicle use and coastal resource protection, including to help establish a 'carrying capacity' for the Park. That 2001 action also prioritized the significance of the annual CDP review process, making it also a prerequisite for continued CDP authorization on the basis of the need to protect coastal resources. Specifically, Special Condition 2 of the fifth amendment states (see also page 34 of **Exhibit 4**):

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

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<sup>21</sup> Although the Commission does not often structure CDP approvals to allow for annual re-review in the manner required here, the structure of this CDP is based on the fact that the original allowed use parameters were intended to be temporary due to the nature of Park operations and management with respect to vehicular/OHV use that warranted subsequent consideration in terms of impacts to coastal resources. At the time the CDP was authorized, LCP provisions to address such use parameters in relation to coastal resource impacts were in flux and not yet certified (and as an initial matter sought to close the Park to vehicular use). The Commission's intent was that the CDP was to be a vehicle to bring LCP-consistent finality to Park operational questions once the LCP was certified. Ultimately, the Commission has not to date taken such a final action, and the base CDP authorization remains as temporary today as it was in the early 1980s.

<sup>22</sup> Although State Parks indicates that as a practical matter it does not allow for these holiday exceedances.

<sup>23</sup> Where the TRT is made up of representatives from: Coastal Commission staff, San Luis Obispo County, USFWS, CDFW, DPR's OHV Division, the OHV Community, the Environmental Community, the Business Community, and the Residential Community, with the ODSVRA Superintendent as a non-voting member. The TRT is advised by a Scientific Subcommittee, consisting of resource experts representing the five government agencies on the TRT, and at least two independent scientists with expertise in applicable sensitive species and ecological processes.

Thus, the Commission is to annually review the effectiveness of the TRT in managing vehicle impacts with respect to Park management, and, if not satisfied that appropriate measures are being taken for the protection of coastal resources, may institute alternative approaches to such management. In fact, the purpose of the condition is to allow the Commission to renew the temporary authorization for another year. If the Commission is satisfied at the annual review that the TRT is effectively studying and managing vehicle impacts and that coastal resources are adequately protected, then the permit remains authorized for another year. Conversely, if the Commission is not satisfied, then the temporary authorization is *not* renewed.<sup>24</sup> Although the precise manner of annual CDP review was modified in 2001's Special Condition 2, base CDP Special Condition 1(b) has not changed. The Commission still retains the ability to modify Park operational parameters pursuant to both that condition and the current annual review requirements.

The CDP, as amended, was structured as providing for interim and temporary use parameters that have not been finalized, even nearly four decades later. Much has changed in that time frame, and the CDP annual review provides the means for evaluating ongoing Park operations. It also provides the Commission with the ability to evaluate existing uses and intensities of uses to assess their LCP and Coastal Act consistency, based on existing scientific evidence, coastal resource impacts, and other facts affecting Park uses and operations. Critically, the CDP as approved and as accepted by State Parks provides the Commission with ongoing authority and jurisdiction to make changes to the CDP through the annual review process in order to protect coastal resources consistent with the Coastal Act and the LCP.

### **C. CDP Annual Review Background<sup>25</sup>**

In addition to considering five CDP amendments through 2001, the Commission also performed six annual CDP reviews between 2002 and 2007, but did not undertake an annual review between the years 2008 and 2014. In these reviews, the Commission repeatedly expressed concerns to State Parks regarding the impacts of OHV use and other vehicular activities in ESHA, especially related to Arroyo Grande Creek crossings.

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<sup>24</sup> On this point it is noted that there have been multiple annual reviews where the Commission was not satisfied with the review, and determined that there were coastal resource problems that weren't being properly addressed, most recently in July 2019. As a result, arguments have been made by some that the uses and intensities of use at the Park were no longer allowed after such reviews as a result and are not allowed now since the July 2019 review inasmuch as the temporary authorization was not renewed. This is a valid reading of the base CDP annual review requirement. At the same time, the Commission in July 2019 affirmatively allowed State Parks another year, ultimately extending to this hearing in March 2021, to address Commission concerns. As a result, Commission staff believes the Commission gave a temporary reprieve (and by extension a temporary renewal of the already temporary authorization) to State Parks in 2019, but that that temporary reprieve only extends to this March 2021 review. And further, per the condition, the Commission here is in the position to require "an alternative approach to resource management, or set of management measures...through this review process." In other words, this is one of the reasons that the Commission is in the position it is with respect to the CDP annual review in March 2021.

<sup>25</sup> This section provides a chronological discussion of the most recent CDP annual reviews and related Park planning matters that lead the Commission to this current annual review on March 18, 2021.

In these years, however, the Commission repeatedly deferred to the efforts of the TRT to conduct ongoing studies and manage uses and intensities of uses in the Park. Thus, the CDP did not change much with respect to the temporarily allowed uses and intensities of use past what had been approved in 1982. And, as a result, the conclusions that the Commission expected would follow in short order following the original CDP action in 1982 (i.e., in relation to access points, allowable use areas, carrying capacity, allowed uses and intensities of use, etc.) have never been achieved to this day. The base CDP still only temporarily authorizes uses and intensities of use at the Park, and these use and intensities of use have not to date been evaluated for permanent authorization under the Coastal Act and the applicable LCPs.

By the early 2010s, and following several years with no CDP reviews, it had become clear to the Commission's staff that it was an appropriate time to reengage the CDP re-review process. This conclusion was based, in part, on interested parties consistently and repeatedly requesting same, and in part due to the changing context and emerging management issues at the Park. For example, by this time the San Luis Obispo County Air Pollution Control District (APCD) was directing State Parks to address serious air quality issues at the Park. In addition, the Commission itself had changed members almost completely in the time since the last review in 2007, and providing the then-current Commission a CDP review represented an opportunity to bring the Commission up to speed on the context, issues, and potential next steps related to overall Park management under the CDP.

### ***2015 CDP Review***

Commission staff undertook a multi-year process in the early 2010s to meet and hear from interested parties, including San Luis Obispo County and State Parks, to help foster a collaborative dialogue and common understanding of the issues, and to start to develop a series of CDP changes that could best begin to meet the challenges and issues at the Park. That then led to the Commission review of the CDP in a public hearing in February of 2015 in Pismo Beach. That hearing provided an overview of the Park, described various requirements of the CDP, summarized some of the primary issues facing the Park, and included a discussion of potential next steps to address these issues. Unsurprisingly, the same primary CDP issues that had never been resolved through past re-reviews or CDP amendments, including access to the Park, allowed intensities and types of uses, carrying capacity, and Arroyo Grande Creek crossings, were discussed at this re-review. The Commission did not, however, take action to change the CDP at that time, including because State Parks requested more time to work through the various issues raised in the staff report, rather than having the Commission impose changes.

### ***2017 CDP Review***

Following the 2015 review hearing, Commission staff worked with State Parks staff to address identified coastal resource impacts based on Commissioner guidance from the 2015 hearing. As part of that discussion, the two staffs worked on potential language for a series of CDP changes. Unfortunately, the two staffs ultimately couldn't reach agreement on the changes, and those efforts culminated in another review hearing in

January of 2017 in San Luis Obispo. At that hearing, Commission staff recommended that the Commission take action to modify the CDP to address coastal resource issues related to the same issues that were discussed in 2015 (and in prior CDP reviews). At the 2017 hearing, State Parks asked that the Commission *not* take action on the staff recommendation, and instead asked the Commission to give Parks more time to work through the issues on their own. And the Commission did not take action at that time, deferring to Parks' request. Shortly thereafter, State Parks decided to embark on a Public Works Plan (PWP)<sup>26</sup> that State Parks has described as the vehicle to address these longstanding Coastal Act, LCP, and CDP issues, and a means of taking a fresh look at Park uses, management and configuration. It described the PWP as a method for reimagining the Park to best meet today's regulatory requirements and coastal resource issues. State Parks indicates that it intends the PWP to replace the base CDP as the underlying Coastal Act/LCP authorization.

### **2017 Dust Control CDP**

In September of 2017 the Commission approved a separate CDP for dust control abatement measures designed to address air quality problems emanating from the Park, including in conformance with requirements promulgated by APCD (CDP 3-12-050). That CDP authorized DPR's then-proposed five-year program to implement a series of measures aimed at controlling and minimizing particulate matter (or "dust") emissions associated with the Park. APCD determined that such emissions had been, and are currently, impairing air quality in downwind communities, including exceeding state and federal particulate matter emission standards in some cases. The high particulate matter concentrations have resulted in what 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. DPR's dust control program is meant to implement measures designed to comply with APCD air quality requirements and minimize particulate matter emissions. 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 allowed State Parks to retire 104 acres of dune ESHA from vehicular, OHV, camping, and other non-habitat uses. This was accomplished by fencing off and restoring these areas with native dune vegetation (i.e., permanent dust control mitigation). The CDP also allowed State Parks to annually deploy up to 40 acres of seasonal dust control measures (e.g.,

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<sup>26</sup> Pursuant to the Coastal Act, public agencies performing public works have the option of preparing a PWP as an alternative to project by project CDP applications and analyses (per Section 30605). Public works are defined by the Act as including all publicly financed recreational facilities (per Section 30114(c)), including the Park, and thus State Parks, as a public agency, can choose to pursue a PWP for the Park. PWPs must be submitted to the Commission for certification. When submitted in areas with certified LCPs, such as the case at the Park, the standard of review for PWPs are the LCPs that apply, in this case the City of Grover Beach and San Luis Obispo County LCPs. And Section 30605 requires consultation with the affected local governments prior to any final actions being taken on a PWP. If a PWP is certified by the Commission, development can proceed without CDPs pursuant to the certified PWP through a process where the public agency notifies the Commission of the development, and the Commission verifies that it is consistent with the certified PWP (and if it is determined that it isn't consistent, then it is not covered by the PWP). Thus, in short, here State Parks decided to pursue a PWP and has been working on it since that time.

wind fencing) during the windy season (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.

***State Parks' PWP Efforts Start in 2017***

Beginning in 2017, State Parks also began working on its PWP, and ultimately released draft PWP concepts and project alternatives for public review and comment in February 2019. These concepts/project alternatives did not address current operations, but rather were focused on potential new and additional physical projects that State Parks might pursue under the PWP. In other words, these preliminary materials focused on potential new projects at the Park but did not address the range of coastal resource impacts and constraints that the Commission had identified in past CDP annual reviews. Upon review of those draft PWP materials, Commission staff was concerned that the PWP effort was not moving in the right direction. The PWP concepts did not appear consistent with the vision of developing a contemporary plan for the Park that addressed the many difficult and serious issues and constraints presented by vehicular use and OHV riding along beaches and in dunes, including addressing required Coastal Act and LCP consistency.

***2019 CDP Review***

Since there had not been one since 2017, and in order to provide the Commission with the opportunity to provide State Parks with some guidance on its PWP, Commission staff decided to schedule another CDP review. Staff discussed the relevant issues with State Parks staff, including sharing and discussing Commission staff's written analysis of the issues and constraints at the Park in early June 2019. On July 11, 2019, in San Luis Obispo, the Coastal Commission held a public hearing to again review the base CDP. At that time, Commission staff was increasingly concerned that: (a) little concrete action had been taken to resolve any of the problems that had been identified in past CDP reviews, including most recently in 2015 and 2017 when the Commission declined to act and gave State Parks more time to address these issues; and (b) the PWP appeared to be moving in a direction that was counter to past Commission direction. For these reasons, Commission staff recommended that the Commission require immediate changes at the Park to begin to meaningfully address longstanding coastal resource impacts and degradation at the Park. These issues included those raised at past reviews that had not been directly addressed, in deference to State Parks' request to have more time to address them. Commission staff also recommended that the Commission provide longer-term direction to State Parks to be implemented through its PWP.

Building off the issues described in prior recent CDP reviews in February 2015 and January 2017, as well as from issues discussed in public hearings regarding State Parks' dust control efforts in CDP 3-12-050 (in September 2017, February 2018, and June 2018), the staff report identified a series of adverse impacts that the uses and intensities of uses at the Park were causing to coastal resources. These issues included impacts to sensitive habitat, air quality, and environmental justice. Commission staff also noted the challenges associated with coming into compliance with the LCP, the

Coastal Act, and with the terms and conditions of the CDP itself. The staff report identified serious impacts being caused to coastal resources with current Park operations. It also recommended that the Commission find that the CDP as it is currently structured was no longer serving as an effective tool to protect coastal resources consistent with the LCPs and Coastal Act. In short, change was needed.

At the July hearing, to address the identified impacts, Commission staff had recommended a series of fifteen operational and other short-term changes to the CDP's terms and conditions intended to be instituted immediately. These changes included more robust habitat protections, as recommended by the Commission's staff ecologists, provisions for dune habitat restoration to address dust control/air quality requirements promulgated by APCD, and finalizing Park access and staging locations to resolve nearly 40-year-old unresolved CDP condition compliance requirements.

However, while acknowledging the identified issues, the Commission wanted to give State Parks additional time to complete its draft PWP so that State Parks could attempt to address these issues therein. In order to provide some guidance for its PWP process, the Commission required that State Parks address the fifteen staff-recommended changes through its PWP process. In addition to the short-term changes, the Commission also sent a letter to State Parks that was intended to provide formal Commission direction on the types of actions that were going to be necessary at the Park to meet Coastal Act and LCP requirements moving forward in the longer-term. Perhaps most notably, the Commission's letter identified the serious coastal resource impacts caused by OHV use, and the legal constraints affecting the Park's current operations, given that such use was occurring in ESHA. As such, whether through the PWP, a future CDP review, or other regulatory instrument, State Parks needed to evaluate what an OHV-free Park would look like. The Commission stated:

*Ultimately, the Coastal Commission concluded and decided that ODSVRA cannot continue to operate as it has while complying with the base CDP, the Coastal Act, and the LCP, and that it is time to explore alternatives to transition ODSVRA away from high-intensity off-highway vehicle (OHV) use to other forms of public access and recreation in order to meet Coastal Act requirements.*

The Commission voted to give State Parks one year to develop a PWP that addressed all of the identified issues, at which time the Commission would review the PWP in a public hearing. In sum, the Commission's July 2019 action did the following:

1. Directed the Commission Chair to send a comment letter providing Coastal Commission direction to State Parks regarding long-term operational and management changes that the Commission believes are necessary at the Park to ensure Coastal Act consistency, including through State Parks' proposed PWP;
2. Required State Parks to address all of staff's 15 recommended operational and other short-term changes as permanent conditions through the PWP process;

3. Required State Parks to provide the Commission with in-person quarterly reports on the progress of State Parks' PWP efforts over the next year (i.e., through summer 2020); and
4. Required State Parks to bring forward a PWP for Commission consideration by the summer of 2020 that addressed the staff-recommended 15 operational and other short-term changes and the Commission's comments and direction regarding longer-term compliance as identified in the Commission Chair's letter.

Notice of the Commission's action and the Commission's direction to State Parks is provided in Exhibits 11 and 12.

### **2020 DHCP**

Following the July 2019 Commission action, staff from both agencies continued to meet and discuss PWP progress. Importantly, in those conversations, State Parks staff was clear that it did not intend to submit a PWP that would look to transition the Park away from OHV uses. Ultimately, and as reflected in State Parks' draft Habitat Conservation Plan (DHCP) and supporting draft environmental impact report (DEIR, both released on February 24, 2020; see Appendix A), State Parks plans to expand OHV activities and intensities of use at the Park. In doing so, State Parks was pursuing changes that were in many cases contrary to the direction of the Commission (e.g., the DHCP proposed to increase OHV riding area into undisturbed ESHA, to reduce the size of the southern enclosure, to leave the enclosure seasonal as opposed to permanent, to continue to allow Arroyo Grande Creek crossings and night riding, etc.).

Commission staff sent comments to State Parks on the DHCP/DEIR identifying these and other problematic issues on May 29, 2020, and to USFWS on the DHCP/Draft Environmental Assessment under NEPA on December 19, 2020 (again see Appendix A). These comments also addressed how the DHCP and DEIR related to PWP development. Commission staff also continued to meet and discuss these same issues and concerns with State Parks staff. Since there was not any draft PWP materials to review at the time that might have allowed for more in-depth consultation, these discussions were at a fairly general level. Even so, these discussions revealed that Commission staff and State Parks' staffs did not share the same ideas about what uses and intensities of uses could be allowed at the Park, consistent with the Coastal Act and LCP. Commission staff was also concerned that the draft PWP was unlikely to include many of the short or long term measures recommended by the Commission in July of 2019. Nonetheless, the two staffs continued to work towards meeting what the Commission had required and State Parks had committed to, namely a hearing on the PWP in summer 2020 that would allow the Commission to deliberate and decide whether the PWP was consistent or not with the LCP, as required by the Coastal Act.

At the PWP update in July 2020, staff reported to the Commission that Commission and State Parks staffs had agreed on a tentative schedule for the release of the proposed

PWP, as well as a tentative hearing date for Commission consideration.<sup>27</sup> Specifically, State Parks staff indicated that drafts of proposed PWP sections would be shared with Commission staff starting in July, and that a draft PWP would be released for public review the week of August 31st. Commission staff would then prepare a staff report and recommendation to be distributed on September 18th for Commission consideration at the Commission's October 2020 meeting. In preparing to meet that schedule, staff thought it prudent to share with DPR staff the type of recommendation that staff intended to make to the Commission for the October hearing.

### ***Staff's 2020 PWP Comments and Recommendation***

In early August of 2020, Commission staff met with State Parks staff and informed them that Commission staff intended to recommend that the Commission act on October 15, 2020 to phase out OHV use over the next 5 years, and act to modify other uses and intensities of uses at the Park in a way that could be found consistent with the LCP. Importantly, staff's recommendation also included providing a transition to a new car-camping area on the beach between West Grand Avenue and Pier Avenue, closing the Pier Avenue vehicular accessway, opening up the beach fronting Oceano to traditional day-use recreational activities for multiple miles without vehicles, and increasing habitat protections in the Park further south.

Subsequently, the Natural Resources Agency was also informed of staff's intended recommendation. And in early September, Resources leadership informed Commission staff that Resources was going to get directly involved in the PWP effort, and asked that staff not agendaize this matter in October for a Commission hearing and vote, as had been the plan that Commission and DPR staffs had agreed upon (and as relayed to the Commission at the PWP update hearing on July 9, 2020). Instead, Resources informed staff that it wanted the new State Parks director, Armando Quintero, to have some time to become more involved in the PWP effort, and it wanted time for Resources and State Parks staffs to re-examine components of the PWP and complete the supporting EIR by the end of the year, and then to submit the PWP for Commission consideration at that time. Resources leadership was clear that such a PWP would address the Commission's July 2019 direction, and that it would be informed by input from the California Department of Fish and Wildlife as it relates to habitat issues. Resources leadership was clear that it wanted an opportunity to complete and coordinate these efforts to inform the preparation of the PWP. And Resources asked that the October hearing instead be a non-action item where Resources and State Parks staffs could update the Commission on their PWP efforts, including their new proposed timeline. The Commission ultimately heard another PWP update at its October 2020 meeting. Commission staff informed the Commission and the public that the revised schedule for consideration and conclusion of Oceano Dunes issues would be for State Parks to submit a draft PWP and a draft EIR for Commission consideration by December 31,

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<sup>27</sup> And although both were ultimately later than anticipated to meet the summer 2020 deadline imposed by the Commission's 2019 action, it wasn't much later, and it was acknowledged that a little leeway was appropriate in light of Covid-19 complications, and the devastating fires in California in 2020 that required all of State Parks' time and attention.



2020, and that the Commission would then hold a public hearing on Oceano Dunes on either February 18, 2021 or March 18, 2021. At that time, Commission staff also walked through the key points of the staff recommendation, both through a staff report and a presentation to the Commission at the hearing, to be sure that all parties and the public were aware of the direction that staff intended to pursue.

### **State Parks Draft PWP**

On December 31, 2020 State Parks released its draft PWP and supporting documents, including an associated DEIR, for public review (see Exhibit 15 for the PWP, and Appendix A for the PWP's supporting documents).<sup>28,29</sup> Broadly, and as discussed in more depth subsequently in this report, the PWP proposes to continue current vehicular and OHV use areas and related activities, to expand such areas into the Oso Flaco Lake and Phillips 66 areas, and to authorize a series of projects both in and outside the Park, such as campground improvements, corporation yard improvements, boardwalk improvements, and similar projects. These proposals, along with State Parks' proposal in its HCP to reduce the seasonal habitat enclosure by one-third and open up an additional 40-acre area of ESHA near Oso Flaco Lake to riding, represents roughly a doubling of the acreage dedicated to OHV and camping use at the Park. These proposals also include significant new infrastructure to accommodate such expanded uses at the Park, including new staging areas, OHV rental/concessionaire area, pump track and training courses, and an OHV historical museum. The PWP also proposes a series of other developments, including State Parks staff housing, new roads, a law enforcement shooting range, new entrance kiosks, and related development and infrastructure at multiple locations in and outside the Park. As discussed in more depth subsequently, the draft PWP does not reflect the direction provided to State Parks by the Commission at its July 2019 hearing.

State Parks is currently accepting public comments on the draft PWP and its supporting DEIR, which, according to State Parks, will be accepted though the date of the Commission's March 18, 2021 CDP review hearing on Oceano Dunes. After the comment period closes, State parks will prepare a response to comments received, and ultimately will certify a final EIR (FEIR), but it is unclear when that process will be complete (and it is not uncommon for complicated and/or controversial cases with many comments received to take a year or more to reach an FEIR). Here, State Parks has not

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<sup>28</sup> The draft PWP is 431 pages, and the supporting documents represent some 4,085 pages (i.e., an existing conditions report (80 pages), a DEIR on the draft PWP (1,968 pages), a draft HCP (971 pages), a DEIR on the draft HCP (659 pages), a draft NEPA environmental assessment on the draft HCP (366 pages), and a CDFW biodiversity plan (41 pages)), for a total of some 4,516 pages of materials. Per State Parks, only the draft PWP (called out as Volume 1 by State Parks) would ultimately be before the Commission for action, and all of the other materials are supporting documents but would *not* be enforceable components of any PWP for Commission action.

<sup>29</sup> The PWP actually covers all of State Parks Oceano Dunes District, which includes the Park but also other areas (e.g., the rest of Pismo State Beach to the north, inland campgrounds, etc.). As referred to herein, this report covers the PWP as it affects the Park, and other aspects it outside the Park are not generally covered. In any case, the Park represents the vast majority of the Oceano Dunes District, and the issues associated with it (and not the District more generally) are the issues that have been associated with the CDP and the Park historically, and that are covered in this CDP review.

speculated on the FEIR distribution date, but the Commission expects it could be a year or more after the DEIR is distributed. Absent an FEIR, the Commission is not legally in a position to take a final action on the PWP. In addition, Section 30605 requires “full consultation” with the affected local governments (here the City of Grover Beach and San Luis Obispo County), and State Parks did not perform such consultation here. As a result, and although the Commission intends this CDP review to provide direction to State Parks regarding the Coastal Act and LCP requirements that will apply to its PWP moving forward, this action is on the CDP, and not the PWP.

In short, State Parks PWP is not legally ready for the Commission to take an action on it. And as is explained in some depth in the subsequent analyses, the issues identified by the Commission in 2019 have really only become more acute, including as evidenced by the chronology of events since then presented above. Thus, this report is an annual CDP review report, through which the Commission has the legal authority and opportunity to make changes to uses and intensities of uses at the Park to make them consistent with LCP and Coastal Act requirements. Critical to that analysis is understanding the requirements of the Coastal Act and the LCPs as they apply to that question at the Park. The next section of the report describes those requirements so that the legal standard for the Commission’s CDP review is clear.

### 3. Applicable Coastal Act and LCP provisions

#### **A. Standard of Review for this CDP Review**

Under the Coastal Act, Local Coastal Programs (LCPs) are made up of a Land Use Plan (LUP), that identifies the kinds, locations, and intensities of allowed use and development, and an Implementation Plan (IP) that provides further detail on carrying out LUP policies, including procedural detail regarding CDP applications. LUPs are required to be consistent with Chapter 3 of the Coastal Act, and IPs are required to be consistent with and adequate to carry out certified LUPs. In cases of internal inconsistency or conflict, LUP provisions generally prevail over IP provisions, and LCPs are required to be read consistent with the Coastal Act from which they derive their statutory authority.<sup>30</sup>

Local governments are required to submit their LCP documents to the Commission for certification, and, once both the LUP and the IP are certified, local governments are

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<sup>30</sup> See *McAllister v. California Coastal Commission* (2009, 169 Cal. App. 4th 912, 929), wherein the Sixth District Court of Appeal overturned a project approval by the Commission in the early 2000s interpreting an LCP ESHA policy to allow non-resource-dependent use (in that case residential use) and development in ESHA. The Court found that such an interpretation was improper, and that the LCP must be understood in relation to the requirements of Coastal Act Section 30240, from which LCP ESHA policies derive their authority, even if the LCP policies were drafted in a manner that provide an argument to allow a non-resource-dependent use in ESHA. In other words, the Court determined that an LCP cannot be read to allow non-resource-dependent development or use in ESHA, but rather that it must be understood first in terms of Section 30240 requirements, and more broadly that an LCP derives its statutory authority from the Coastal Act, and it must be understood in ways that are Coastal Act consistent, and not in ways that are not consistent with the Act. As a published appellate court decision, that decision requires the Commission to interpret LCPs, including applicable LCPs here, in that way.

delegated CDP authority over most coastal zone areas within their boundaries,<sup>31</sup> with the Commission retaining an oversight role over LCP implementation, including an appellate role over certain local government CDP decisions. The Commission also retains jurisdiction over its own CDPs, even CDPs that pre-date LCP certification and that are located totally or partially within a local government's CDP jurisdiction. This is the case with the Park, where the Commission retains authority over its base CDP from 1982, even though some of the affected area is now located within City of Grover Beach and San Luis Obispo County CDP jurisdictions.<sup>32</sup>

The portion of the Park that extends from West Grand Avenue south about one-third of a mile towards the Pier Avenue entrance ramp is subject to the City of Grover Beach LCP, and most of the remainder of the Park is subject to the San Luis Obispo County LCP (other than areas near Arroyo Grande Creek and Oso Flaco Creek that remain subject to the Commission's retained CDP jurisdiction, as well as all public trust areas and areas seaward of the mean high tide line along the shore. In these areas, the Coastal Act is the standard of review). Thus, the standard of review here is split among the City of Grover Beach LCP to the far north, the Coastal Act where the two creeks extend to the ocean and along the immediate shoreline, and the San Luis Obispo County LCP everywhere else. Although there are some differences, these LCPs and the Coastal Act are fairly well harmonized, as is explained in the sections that follow.

## **B. Applicable Coastal Act Provisions**

The standard of review for the areas nearest Arroyo Grande Creek and Oso Flaco Creek and along the immediate shoreline within the Commission's retained jurisdiction is the Coastal Act. And, as described above, the Coastal Act also provides interpretive guidance to the LCPs, from which they derive their statutory authority. Perhaps not surprisingly, and as is not unusual for a State Park, the most critical Coastal Act provisions governing the Park are those related to best providing public recreational access in a manner that respects the underlying resources from overuse and degradation. Coastal Act Sections 30210 through 30224 specifically protect public access and recreational opportunities. In particular:

***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*

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<sup>31</sup> The Coastal Commission retains CDP jurisdiction over tidelands, submerged lands, and public trust lands by statute.

<sup>32</sup> The Commission also may be the CDP authority when projects span Commission and local government CDP jurisdictions, and where the affected local governments, the Commission, and the Applicant all agree to a consolidated CDP process (such as was the case with the aforementioned dust control CDPs). The standard of review for a consolidated CDP application is the Coastal Act, with relevant LCPs providing non-binding guidance.

*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, 2) adequate access exists nearby, or, (3) agriculture would be adversely affected. ...*

**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(a).** *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 30222.** *The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.*

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

In addition, Section 30234.5 protects recreational fishing:

**Section 30234.5.** *The economic, commercial, and recreational importance of fishing activities shall be recognized and protected.*

Importantly, the Coastal Act Section 30210 direction to maximize access and

recreational opportunities represents a different threshold than to simply provide or protect such access and opportunities, and is fundamentally different from other like provisions in this respect: it is not enough to simply provide access to and along the coast, and not enough to simply protect access; rather such access must also be maximized. This terminology distinguishes the Coastal Act in certain respects, and provides fundamental direction when public recreational access issues are raised, as they are here.

At the same time, while a fundamental tenet of the Coastal Act is to protect and provide for maximum public access and recreational opportunities along the coast, that direction is qualified inasmuch as such access must be provided in a manner that protects fragile 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(a) 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."

In essence, the Coastal Act requirements for providing maximum public recreational access opportunities are thus tempered by the need to provide that access and those opportunities in a manner that doesn't lead to other coastal resource impacts, such as those caused by the overuse of the resources upon which such recreational access is being provided. In other words, the Act does not stand for the premise that public access and recreation must be provided in all places irrespective of constraints. It also does not prohibit reducing areas currently used for recreational access purposes as necessary to address such constraints. Rather, the Act specifies the parameters for when it may be appropriate to limit and regulate such recreational access, including for consistency with applicable requirements protecting natural resources, air quality, and environmental justice—all key Coastal Act priorities as discussed in the subsequent analysis. Oftentimes the Commission is not faced with questions of such resource overuse in recreational access cases, and it is not an issue that requires discussion. Here, it is front and center to the public recreational access discussion, and cannot be ignored.

As described previously, the Park offers extensive and unique recreational offerings, including the unique opportunity to drive along six miles of shoreline and to camp overnight and operate OHVs within roughly 1,300 acres of dunes and beach. It also provides for day-use activities such as hiking along its beaches and within more serene, pastoral settings near Oso Flaco Lake, as well as more typical beach use activities. The popularity of this Park for its recreational offerings, particularly for vehicular recreation, cannot be denied or understated. The question here under the Coastal Act's public recreational access provisions is what types of use and intensities of use can be

provided at the Park in a way that adequately protects coastal resources.

In addition, the Coastal Act provides strong protections to coastal resources in general, and to habitats, agricultural lands, and ESHA more specifically. For example, Section 30250(a) provides for general coastal resource protection, stating:

**Section 30250(a).** *New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.*

Section 30251 speaks to protection of visual resources more broadly, including natural features such as the beach and dunes at the Park that create scenic shoreline panoramas, as well the creek and lake areas that provide different but equally striking vistas. Section 30251 states:

**Section 30251.** *The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

Section 30253 requires minimizing risks, assuring stability without armoring or substantial landform alteration, and minimizing energy consumption. All of these requirements are applicable at the Park, including minimizing energy consumption. This section also protects special communities and neighborhoods that are popular visitor destination points for recreational uses, and it also speaks directly to ensuring that development is consistent with air pollution control requirements. It requires compliance with requirements imposed by local air pollution control districts as well as the California Air Resources Board. Both of these issues are germane at the Park, particularly in relation to the significant air quality and public health hazard that the Park's activities have led to (and continue to lead to). Section 30253 states:

**Section 30253.** *New development shall:*

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that*

*would substantially alter natural landforms along bluffs and cliffs.*

*(3) Be consistent with requirements imposed by an air pollution control district or the State Air Resources Control Board as to each particular development.*

*(4) Minimize energy consumption and vehicle miles traveled.*

*(5) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.*

With respect to agriculture, the Coastal Act severely limits agricultural conversion, an issue that is most relevant with respect to State Parks' proposals to convert agricultural lands for a campground, corporation yard, staff housing, and related development and activities near Oso Flaco Lake. These provisions state:

**Section 30241.** *The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas' agricultural economy, and conflicts shall be minimized between agricultural and urban land uses through all of the following:*

*(a) By establishing stable boundaries separating urban and rural areas, including, where necessary, clearly defined buffer areas to minimize conflicts between agricultural and urban land uses.*

*(b) By limiting conversions of agricultural lands around the periphery of urban areas to the lands where the viability of existing agricultural use is already severely limited by conflicts with urban uses or where the conversion of the lands would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development.*

*(c) By permitting the conversion of agricultural land surrounded by urban uses where the conversion of the land would be consistent with Section 30250.*

*(d) By developing available lands not suited for agriculture prior to the conversion of agricultural lands.*

*(e) By assuring that public service and facility expansions and nonagricultural development do not impair agricultural viability, either through increased assessment costs or degraded air and water quality.*

*(f) By assuring that all divisions of prime agricultural lands, except those conversions approved pursuant to subdivision (b), and all development adjacent to prime agricultural lands shall not diminish the productivity of such prime agricultural lands.*

**Section 30242.** *All other lands suitable for agricultural use shall not be converted to nonagricultural uses unless (1) continued or renewed agricultural use is not*

*feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands.*

**Section 30243.** *The long-term productivity of soils and timberlands shall be protected, and conversions of coastal commercial timberlands in units of commercial size to other uses or their division into units of noncommercial size shall be limited to providing for necessary timber processing and related facilities.*

And for archeological resources, the Act states:

**Section 30244.** *Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.*

At its August 2018 meeting, the Coastal Commission adopted its Tribal Consultation Policy<sup>33</sup> to comply with state law and ensure California Native American tribal members are full participants in Commission decisions. Similarly, Coastal Act Sections 30107.3 and 30604(h) allow for the Commission to consider environmental justice when making CDP decisions:

**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.*

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<sup>33</sup> See the Coastal Commission’s Tribal Consultation Policy at <https://documents.coastal.ca.gov/assets/env-justice/tribal-consultation/Adopted-Tribal-Consultation-Policy.pdf>.



**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”)<sup>34</sup> to guide and inform its decisions and procedures in a manner that is consistent with the provisions in, and furthers the goals of, the Coastal Act and certified LCPs. The EJ Policy further articulates environmental justice concepts, including 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).

And finally, and perhaps most critically as it applies to the Park, the Coastal Act includes strong protections for habitats, including coastal lakes, wetlands, streams, and the ocean, stating:

**Section 30230.** *Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

**Section 30231.** *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

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<sup>34</sup> See the Coastal Commission’s EJ Policy at [https://documents.coastal.ca.gov/assets/env-justice/CCC\\_EJ\\_Policy\\_FINAL.pdf](https://documents.coastal.ca.gov/assets/env-justice/CCC_EJ_Policy_FINAL.pdf).

**Section 30232.** *Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.*

**Section 30233(a).** *The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*

*(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*

*(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*

*(3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*

*(4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*

*(5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*

*(6) Restoration purposes.*

*(7) Nature study, aquaculture, or similar resource dependent activities.*

**Section 30236.** *Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.*

Ultimately, the Coastal Act identifies certain habitats as having extreme sensitivity, namely environmentally sensitive habitat areas (ESHA). Section 30107.5 defines ESHA as “any area in which plant or animal life or their habitats are either rare or especially

valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments,” and Section 30240 protects these areas, as follows:

**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.*

Coastal Act Section 30240(a) protects ESHA by prohibiting uses within it, except those that are dependent on the habitat to be able to occur at all, such as restoration and nature study, also referred to as resource-dependent uses. Any allowed resource dependent uses are also required to protect ESHA from any significant disruption of habitat values. In addition, Coastal Act Section 30240(b) requires that development adjacent to ESHA (and parks and recreation areas) be sited and designed to prevent impacts that would significantly degrade such areas. These Coastal Act provisions define the types and intensities of use that are allowed in ESHA, and applies similar restrictions for development even adjacent to ESHA. These provisions prohibit more intensive and non-resource dependent uses in ESHA as well as uses that significantly disrupt habitat values, regardless of whether offsetting mitigation is proposed. Thus, the Coastal Act does not let development ‘mitigate away’ ESHA impacts, as is sometimes the case for certain habitat resources protected under CEQA, HCPs, and NCCPs, rather it prohibits the use in the first place.<sup>35</sup> This is an important and critical distinction for the Commission when considering ESHA protection issues, including as these are perhaps the most critical of the Coastal Act/LCP issues affecting the Park.

The Coastal Act thus includes an extensive policy framework requiring the protection of coastal resources, with specific policy requirements governing kinds, locations, and intensities of allowed uses. The Coastal Act requires the maximization of public access and recreational opportunities, but only where the underlying resources can accommodate same without significant problems, and in a manner consistent with other Coastal Act policies protecting ESHA, agricultural lands, and other sensitive natural resources. All development in the coastal zone, including at the Park, must be reviewed

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<sup>35</sup> See, for example, the Fourth District Court of Appeals published decision in *Bolsa Chica Land Trust v. Superior Court* (1999) 71 Cal.App.4th 493, 507. In *Bolsa Chica*, the court held that: (1) Section 30240 only allows development in ESHA that meets both its use and disruption tests, and (2) that Section 30240 does not allow development in ESHA even if the impacts to of that development will be offset or mitigated elsewhere. The court’s decision in *Bolsa Chica* affirms the fundamental requirements that a project in ESHA must be resource-dependent and must not result in significant habitat disruption. In short, the Commission is required to prohibit all but resource-dependent uses in ESHA, and required to prohibit those uses in ESHA when they would significantly disrupt habitat values. As a published appellate court decision, the Commission is required to follow the holdings in *Bolsa Chica* (as it is with *McAllister*). Thus, the Commission must interpret Section 30240 of the Coastal Act and the relevant ESHA provisions of LCPs, including the applicable LCPs here, as instructed by the court.

through this lens, including as these Coastal Act policies are implemented through Local Coastal Programs, as described below.

### **C. Applicable LCP Provisions – City of Grover Beach LCP**

As described above, the northernmost portion of the Park is subject to the City of Grover Beach LCP, which was first fully certified in 1982 and comprehensively updated in 2014. The LCP includes a series of policies that seek to maximize public recreational access while ensuring protection of sensitive habitats, similar to the Coastal Act. More specifically, the LCP includes extensive background information regarding the popularity of its beachfront, which is entirely owned by State Parks as part of Pismo State Beach, and includes one of the two vehicular entrances into the Park at West Grand Avenue. But given the amount of recreational use of its shoreline, the LCP also recognizes the potential stress that intense recreation can have on shoreline resources, both on natural resources (e.g., affecting dunes) and human resources (e.g., ensuring vehicles don't detract from passive beach recreational experiences).<sup>36</sup> Thus, the LCP speaks to the need to ensure well-defined areas that delineate where and what type of recreation is allowed, and at what level of intensity. Generally, the LCP speaks to providing recreational access opportunities consistent with resource protection, including for ESHA. The LCP states:

***LUP Policy 5.7.A:*** *Ensure that maximum public coastal access be provided...*

***LUP Policy 5.7.B:*** *Ensure that public access to the beach and shoreline is consistent with the protection of public safety.*

***LUP Policy 5.7.C:*** *Ensure that public access to the beach and shoreline is consistent with the protection of natural resources.*

Thus, similar to the Coastal Act policies discussed previously, the LCP seeks to maximize public access and recreational opportunities in a manner protective of sensitive resources, including dune ESHA. And within that general construct, the LCP also specifically describes certain Park requirements that are applicable here. Specifically, the LCP recognizes that vehicles use West Grand Avenue and the beach for recreational purposes, including for disabled access, but specifically does not allow vehicles in the intertidal area or in the dunes just inland of the flat beach area:

***LUP Policy 2.1.5.A.1:*** *The segregation of incompatible recreational uses of the intertidal zone shall be implemented to ensure that maximum possible value is gained from these resources by all users. The area between [West] Grand*

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<sup>36</sup> For example, LUP page 16 states: "The greatest source of present and potential conflict with resource protection in the dunes lies in damage done to dune vegetation by overuse. Recreational overuse by vehicles, which are prohibited by law from entering the dunes, is a particularly critical problem. Off-road vehicles in this area have destroyed wide swaths of vegetation in the foredunes, thus reducing their stability and habitat value."

*Avenue and the northerly City limits shall remain designated for pedestrian uses only, except for emergency, law enforcement, and maintenance vehicles.*

***LUP Policy 2.1.5.A.2:*** *With the cooperation of the California Department of Parks and Recreation, special precautions shall be taken to ensure that the vegetated dunes are not further damaged through overuse, either by vehicles or pedestrians. Precautions shall include the posting of additional signs along Grand Avenue and the beach which notify visitors of the prohibition against vehicular use of the dunes as well as the penalty for violating this prohibition (Section 30240(a)).*

***LUP Policy 5.7.A.1.c:*** *The provision of vehicular and pedestrian access to the beach from [West] Grand Avenue shall be maintained.*

In short, these policies summarize the LCP's approach to recreational access delineation, including as it affects the Park. Essentially, vehicles are allowed on the portion of the beach that is not ESHA that extends south one-third of a mile from the West Grand Avenue entrance to the City limits in order to maintain the recreational utility that doing so provides. 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), or in vegetated dunes. The LCP found that this delineation was important to ensure the beach and dune areas served multiple recreational users, provided such uses weren't allowed in areas that constitute ESHA, while protecting sensitive coastal resources (including the backdunes just inland from the sandy beach, which the LCP designates as ESHA). Thus, the only Park area under the City of Grover Beach LCP within which non-resource dependent development, and even potentially more intense uses, such as vehicular uses, might be able to occur is the flatter beach area extending south about one-third of a mile from West Grande Avenue to the City limits.

#### **D. Applicable LCP Provisions – San Luis Obispo County LCP**

The remainder (and the vast majority) of the Park is subject to the San Luis Obispo County LCP, which was first fully certified in 1988,<sup>37</sup> and it includes an extensive policy framework regulating public recreational access, dunes and other ESHA, and also the Park specifically. On the latter, the LCP includes a series of specific policies that are intertwined with, and even reference, the Commission's base CDP for the Park.<sup>38</sup> Much

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<sup>37</sup> The LCP's LUP was certified in 1984, and the LCP's IP (and overall LCP) was certified in 1988.

<sup>38</sup> As described earlier, the reason for this was that the County (in its originally proposed initial 1981 LUP) had proposed to eliminate vehicle use in the Park, and the Commission acted on the base CDP (in 1982) as a means of providing a compromise that would temporarily authorize vehicular uses while the County, Commission, and State Parks worked through issues to decide what level of such vehicular recreational use might be appropriate in light of the resources involved. Not wanting to delay LUP certification, the County's ultimately certified LUP includes provisions that speak to both vehicular recreational use and resource protection, and were intended to be amended once decisions regarding use issues were resolved. The Commission's base CDP requires an LCP amendment to put in place the conclusions of the carrying capacity, use, and intensity of use exercises through the LCP. Because there have been no definitive decisions nor agreements on that point to this day, some forty years later, as described earlier

like the Coastal Act, the LCP seeks to maximize public access and recreational opportunities, including explicitly along the County's beaches and shoreline areas. And like the Coastal Act, the LCP similarly requires that such opportunities not be provided at all costs, but rather that they be adjusted as need be in terms of the type of and intensity of allowed use that these resources can accommodate without resource degradation and related issues. And, fundamentally, as explained in detail subsequently, the LCP ultimately defines all of the Park as ESHA, other than the State Park-owned agricultural fields near the Oso Flaco Lake area and the flat beach area seaward of the dunes that is located north of Arroyo Grande Creek (see map of the ESHA areas of the Park in Exhibit 4).

### ***County LCP Structure***

The LCP's LUP is comprised of three components: the Framework for Planning document, which serves as a type of "roadmap" describing the County's coastal zone and how the rest of the LCP functionally works to regulate development; the Coastal Plan Policies document, which identifies the overarching coastal resource protection policies governing development throughout the coastal zone; and four area plans that identify additional policies specific to each of the LCP's four geographic areas (i.e., North Coast, Estero, San Luis Bay, and South County Area Plans). The Park is almost entirely subject to the LUP's South County Area Plan.<sup>39</sup> The LCP's IP consists of the Coastal Zone Land Use Ordinance (or CZLUO, Title 23 of the County Code). Per the LCP, LUP provisions generally prevail over IP provisions in cases of internal inconsistency or conflict, with some exceptions. Specifically, the LUP's Framework for Planning document states that if a policy listed in the LUP's Coastal Plan Policies document is implemented by an IP ordinance, the ordinance prevails in case of any conflict, and if a policy listed in an LUP area plan conflicts with a policy in the LUP Coastal Plan Policies document or an IP ordinance, the area plan policy prevails in both cases. For the Park, any internal questions are to be resolved in favor of the South County Area Plan (or the San Luis Bay Area Plan for the smaller area in the County's LCP jurisdiction north of Arroyo Grande Creek). In addition, the LCP is also required to be read and interpreted consistent with the Coastal Act.

### ***County LCP Public Recreational Access Provisions***

First, with respect to public recreational access, the LUP Coastal Plan Policies' Shoreline Access chapter includes policies protecting existing public access and requiring new public recreational access, but also requiring such access to respect natural resource constraints. Shoreline Access (SA) Policy 1 protects existing access, including prescriptive rights and ensuring development doesn't interfere with the public's right of access, mirroring Coastal Act Section 30211:

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in this report, and because there have been no LCP amendments to change these sections, the LCP continues to speak to both vehicular recreational use and resource protection.

<sup>39</sup> The portion of the Park that extends south from the City of Grover Beach city limit line (i.e., about a third of the way between West Grand and Pier Avenues) to Arroyo Grande Creek is located within an area covered by the San Luis Bay Area Plan.

**SA Policy 1: Protection of Existing Access.** *Public prescriptive rights may exist in certain areas of the county. Development shall not interfere with the public's right of access to the sea where acquired through historic use or legislative authorization....*

SA Policy 2 requires maximum public access be provided from the nearest public roadway to and along the shoreline, unless inconsistent with public safety or the protection of fragile coastal resources, mirroring Section 30212(a):

**SA Policy 2: New Development.** *Maximum public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development. Exceptions may occur where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources; (2) adequate access exists nearby, or; (3) agriculture would be adversely affected....*

And SA Policy 9 requires areas that have been severely degraded through overly intense and unrestricted use to be restored, with access controlled and limited if need be:

**SA Policy 9: Restoration and Enhancement of Shoreline Access Areas.** *Areas that have been severely degraded through overly intense and unrestricted use should be restored by such techniques as revegetation with native plants, trail consolidation and improvement and through the provision of support facilities such as parking, defined trail and/or beach walk stairway systems, trash receptacles, restrooms, picnic areas, etc. In extremely degraded areas (especially sensitive habitat areas), a recovery period during which public access would be controlled and limited may be necessary. This should be determined through consultation with the property owner and appropriate public agencies to establish the means of controlling public access that is reasonable and cost effective. Any limitation of use shall be evaluated periodically to determine the need for continued limited use.*

These LUP policies are implemented by IP Section 23.03.420, which describes standards for protecting, providing, and maintaining existing and new public access facilities:

**23.04.420 - Coastal Access Required.** *Development within the Coastal Zone between the first public road and the tidelands shall protect and/or provide coastal access as required by this section. The intent of these standards is to assure public rights of access to the coast are protected as guaranteed by the California Constitution. Coastal access standards are also established by this section to satisfy the intent of the California Coastal Act. ...*

**j. Restoration of degraded access areas.** *Existing coastal access areas that have been degraded through intense use shall be restored along with construction of new development on the site to the maximum extent feasible. ...*

*(4) Public access may be restricted if it is determined that the area is extremely degraded and time is needed to allow recovery of vegetation. ...*

**k. [Siting] criteria for coastal accessway.** ... *Where feasible, the following general criteria shall be used in reviewing new access locations, or the location of new development where coastal access considerations are involved:*

*(1) Accessway locations and routes should avoid agricultural areas, sensitive habitats and existing or proposed residential areas by locating near the edge of project sites;*

*(2) The size and location of vertical accessways should be based upon the level and intensity of existing and proposed access;*

*(3) Review of the accessway shall consider: safety hazards, adequate parking provisions, privacy needs of adjacent residences, adequate signing, and levels of improvements necessary to provide for access;*

*(4) Limiting access to pass and repass should be considered where there are nearby residences, where topographic constraints make the use of the beach dangerous, where there are habitat values that can be disturbed by active use.*

The Coastal Plan Policies' Recreation and Visitor-Serving Facilities (RVSF) chapter includes policies that mirror the Coastal Act in this regard as well. It contains policies protecting and prioritizing opportunities for coastal recreation, including lower-cost recreation in State Parks (RVSF Policies 1, 3, and 7), as well as prioritizing recreation and visitor-serving commercial development over other types of development when otherwise consistent with the protection of natural resources (RVSF Policy 2):

***RVSF Policy 1: Recreation Opportunities.*** *Coastal recreational and visitor-serving facilities, especially lower-cost facilities, shall be protected, encouraged and where feasible provided by both public and private means....*

***RVSF Policy 2: Priority for Visitor-Serving Facilities.*** *Recreational development and commercial visitor-serving facilities shall have priority over non-coastal dependent use, but not over agriculture or coastal dependent industry in accordance with [Coastal Act Section] 30222. All uses shall be consistent with protection of significant coastal resources....*

***RVSF Policy 3: Low Cost Facilities.*** *Larger visitor-serving projects shall make provisions for services which are geared to a range of costs, including low cost facilities.*

***RVSF Policy 7: Low Cost Facilities within State Parks.*** *The State Department of Parks and Recreation should provide lower cost recreation facilities such as overnight camping and youth hostels where possible.*



Clearly, both chapters emphasize the importance of maximizing public recreational access opportunities related to coastal lands and beaches, while also affirming that such recreational access must be provided in a way that protects significant coastal resources. Accordingly, the LCP also includes a series of complementary policies protecting coastal resources, including ESHA.

### **County LCP ESHA Provisions**

The LCP includes a comprehensive set of policies regulating development within ESHA in order to implement Coastal Act requirements. First, IP Section 23.11.030 includes a definition of ESHA similar to the Coastal Act,<sup>40</sup> while also being specific about certain types of habitats that fall under the broader definition:

***IP Section 23.11.030: Environmentally Sensitive Habitat Area (Mapped ESHA).*** A type of Sensitive Resource Area<sup>41</sup> where plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and development. They include wetlands, coastal streams and riparian vegetation, **terrestrial** and marine **habitats** and are **mapped as Land Use Element<sup>42</sup> combining designations**. Is the same as an Environmentally Sensitive Habitat. (emphasis added)

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<sup>40</sup> For reference, as described above Coastal Act Section 30107.5 defines ESHA as “any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.”

<sup>41</sup> The term ‘Sensitive Resource Area’ is defined in IP Section 23.07.160 as a combining designation/overlay meant to identify and map “areas with special environmental qualities, or areas containing unique or endangered vegetation or habitat resources.” The section then lists the four types of habitats that are ESHA (wetlands, streams and riparian vegetation, marine habitats, and terrestrial habitats) and includes development standards specific to them. In essence, the SRA overlay is meant to map ESHA. In addition, IP Section 23.11.030 defines a Sensitive Coastal Resource Area to mean “those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity, pursuant to Section 23.01.043c(3) of this title.” And IP Section 23.01.043(c)3 is a part of the IP that discusses appealable CDP decisions, including in relation to decisions on development within Sensitive Coastal Resource Areas. In that context, that section indicates that Sensitive Coastal Resource Areas include: “(i) Special marine and land habitat areas, wetlands, lagoons, and estuaries mapped and designated as Environmentally Sensitive Habitats (ESHA) in the Local Coastal Plan. Does not include resource areas determined by the County to be Unmapped ESHA. (ii) Areas possessing significant recreational value, including any “V” (Visitor Serving designation) as shown in the Land Use Element and areas in or within 100 feet of any park or recreation area. (iii) Highly scenic areas which are identified as Sensitive Resource Areas by the Land Use Element. (iv) Archaeological sites referenced in the California Coastline and Recreation Plan or as designated by the State Historic Preservation Officer. (v) Special Communities or Small-Scale Neighborhoods which are significant visitor destination areas as defined by Chapter 23.11 of this title. (vi) Areas that provide existing coastal housing or recreational opportunities for low-and moderate income persons. And (vii) Areas where divisions of land could substantially impair or restrict coastal access.” Thus, ESHAs are a type of Sensitive Resource Area and Sensitive Coastal Resource Area under the LCP.

<sup>42</sup> Note that references to the Land Use Element are the same as references to the LUP because the LUP serves as the Land Use Element for purposes of the General Plan in the coastal zone.

**IP Section 23.11.030: Environmentally Sensitive Habitat Area (Unmapped ESHA).** A type of Sensitive Resource Area where plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and development. They include wetlands, coastal streams and riparian vegetation, **terrestrial and marine habitats that may not be mapped as Land Use Element combining designations.** The existence of Unmapped ESHA is determined by the County at or before the time of application acceptance and shall be based on the best available information. Unmapped ESHA includes but is not limited to:

- a. Areas containing features or natural resources when identified by the County or County approved expert as having equivalent characteristics and natural function as mapped other environmental sensitive habitat areas;**
- b. Areas previously known to the County from environmental experts, documents or recognized studies as containing ESHA resources;**
- c. Other areas commonly known as habitat for species determined to be threatened, endangered, or otherwise needing protection. (emphasis added)**

And thus, ESHA may be mapped or unmapped by the LCP. In this case, the Park includes both mapped and unmapped ESHA per the LCP, with the overwhelming majority of the Park (i.e., everything south of Arroyo Grande Creek, other than the active agricultural portions of the agricultural properties) being mapped ESHA. Specifically, terrestrial habitat is listed as one of the types of ESHA. IP Section 23.11.030 defines it as:

*Sensitive animal or plant habitats on land areas in the Coastal Zone identified as Combining Designations in the Land Use Element.*

The LCP identifies beaches and dunes as a type of terrestrial habitat, including in the LUP South County Area Plan's Coastal Planning Area Combining Designation Map, which identifies all of the Park (including both the beaches and dunes) south of Arroyo Grande Creek as ESHA. Thus, the vast majority of the Park, and everything south of Arroyo Grande Creek not in agricultural production, is a terrestrial habitat that is mapped ESHA per the LCP, to which all of the LCP's ESHA provisions apply.<sup>43</sup> And this status is well borne out inasmuch as the Commission has repeatedly found the dunes at

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<sup>43</sup> State Parks asserts that the LCP ESHA maps (including the LUP South County Area Plan's Coastal Planning Area Combining Designation Map) are only a starting point, and areas that are mapped ESHA might be determined not to be ESHA through further review. However, there is nothing in the LCP that actually establishes a process for mapped ESHA to be determined not to be ESHA. In fact, the LCP simply states that if an area is mapped as ESHA, then the policies that affect ESHA apply. As such, the LCP's ESHA maps are determinative as to what constitutes ESHA under the LCP. In addition, and as subsequently described in the 'ESHA and related habitat resources' section of this report, the area mapped ESHA under the LCP is mapped ESHA for good reasons, and those reasons independently support a determination of ESHA, even if the area wasn't mapped as ESHA by the LCP.

the Park to be ESHA over the years (i.e., in past CDP reviews), and it is further evidenced by the Commission's Ecologist Team's<sup>44</sup> memo on the subject (see additional discussion on this point in the 'ESHA and related habitat resources' section of this report and in Exhibit 9). That memo states:

*All of the habitats within Oceano Dunes meet the definition of environmentally sensitive habitat area (ESHA). The area is teeming with rare vegetation communities and rare plants and animals. It also supports habitat that is especially valuable because of its special nature or role in the ecosystem. The Oceano Dunes habitats are threatened by development and human activities such as off-highway vehicle use. The only natural area in Oceano Dunes that is not considered environmentally sensitive habitat is the beach area of Pismo State Beach between West Grand Avenue and Arroyo Grande Creek. ... 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.*

Thus, with respect to the Park area north of Arroyo Grande Creek that is not mapped as ESHA by the LCP, there are really two distinguishable segments. First, the area between the Creek and Pier Avenue is made up of a flatter sandy beach area backed by rising dunes that extend to a strip of residences along Strand Way in Oceano, as well as the Pier Avenue entrance area, kiosk, and parking lot immediately north of Pier Avenue proper. And second, there is the same flatter beach area and rising dunes inland of that extending north of the Pier Avenue area to the City of Grover Beach city limits, but it is backed by a significant vegetated dune area inland of that (see Exhibit 1). These two areas are subject to the San Luis Bay Area Plan, and the San Luis Bay Coastal Planning Area Rural Combining Designation Map does not map these areas as ESHA. The Commission ecologists have evaluated this area pursuant to the LCP's unmapped ESHA criteria and determined that the dune areas inland of the flatter beach area constitutes ESHA, but the flatter beach area does not.

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<sup>44</sup> The Commission's Ecologist Team is made up of Dr. Jonna Engel, Dr. Lauren Garske-Garcia, and Dr. Laurie Koteen, who together have decades of education and experience in biological assessment and protection, including in terms of ESHA determinations under the Coastal Act.

Thus, in sum, under the applicable LCPs, the entirety of the Park south of Arroyo Grande Creek (other than active agricultural areas near the Oso Flaco lake area), including the beach<sup>45</sup> and dunes, is designated ESHA, as are the dune features inland of the flatter sandy beach north of the Creek and extending to West Grand Avenue. In addition, north of Arroyo Grande Creek, the flatter sandy beach is not considered ESHA by either LCP.<sup>46</sup> See map of ESHA areas of the Park in Exhibit 4.

Within ESHA, LUP Coastal Plan Policies Environmentally Sensitive Habitat (ESHA) Policy 1 states that only those uses dependent on the resource are allowed within ESHA, and ESHA must be protected from significant disruption, mirroring Coastal Act Section 30240 in that respect as follows:

***ESHA Policy 1: Land Uses Within or Adjacent to Environmentally Sensitive Habitats.*** *New development within or adjacent to locations of environmentally sensitive habitats (within 100 feet unless sites further removed would significantly disrupt the habitat) shall not significantly disrupt the resource. Within an existing resource, only those uses dependent on such resources shall be allowed within the area. (emphasis added)*

Next, the chapter also includes policies for specific types of ESHA, including terrestrial habitats. Policy 29, the terrestrial habitat subsection of the ESHA policies, reaffirms the resource-dependent requirement for terrestrial habitats that was specified in ESHA Policy 1:

***ESHA Policy 29: Protection of Terrestrial Habitats.*** *Designated plant and wildlife habitats are environmentally sensitive habitat areas and emphasis for protection should be placed on the entire ecological community. Only uses dependent on the resource shall be permitted within the identified sensitive habitat portion of the site.*

And Policy 36 specifically describes policies for dunes:

***ESHA Policy 36: Protection of Dune Vegetation.*** *Disturbance or destruction of any dune vegetation shall be limited to those projects which are dependent upon such resources where no feasible alternatives exist and then shall be limited to the smallest area possible. Development activities and uses within dune vegetation shall protect the dune resources and shall be limited to resource dependent, scientific, educational and passive recreational uses.*

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<sup>45</sup> Note that the LCPs' treatment of the beach in the Park for purposes of ESHA matches with the critical habitat designations pursuant to the USFWS. Specifically, the beach south of Arroyo Grande Creek is mapped and designated critical habitat for the threatened Western snowy plover, whereas north of the creek it is not.

<sup>46</sup> This distinction between treating inland dunes as ESHA and generally not treating more urban recreational beaches as ESHA is not uncommon on the California coast, and it speaks to the recreational uses that are typical at most beaches fronting more urban areas, such as the area to which this distinction applies in the north of the Park.

*Coastal dependent uses may be permitted if it can be shown that no alternative location is feasible, such development is sited and designed to minimize impacts to dune habitat and adverse environmental impacts are mitigated to the maximum extent feasible. Revegetation with California native plant species propagated from the disturbed sites or from the same species at adjacent sites shall be necessary for all projects. (emphasis added)*

Specifically, the policy states that only those uses, including passive recreational uses, dependent on dune resources are allowed within that habitat. The policy also states that coastal-dependent development may also be allowed if certain criteria are met, including if no other alternative is feasible and impacts are mitigated. While the LCP does not include a specific definition of “passive recreational uses,” it does include a definition of coastal-dependent uses<sup>47</sup> as well as coastal- and non-coastal dependent recreational uses.<sup>48</sup> And although State Parks asserts that essentially all Park uses are coastal-dependent recreational uses, including all vehicular and OHV uses, only the more general non-vehicular beach activities are defined as such in the LUP. The list in the LUP is complete and does not identify vehicular activities as coastal-dependent recreational uses. Thus, vehicular activities are explicitly not a coastal-dependent recreational use under the LCP.<sup>49</sup>

Three important concepts are derived from these LCP provisions. The first is that the LCP allows coastal-dependent uses in dunes subject to specific criteria (ESHA Policy 36), but only allows resource-dependent use in dune that is also ESHA (ESHA Policy 29). In other words, if there were a dune area in the coastal zone that were not ESHA, then the LCP specifies that coastal-dependent uses may be allowed there. Conversely, where an area is dune and also ESHA, such as at the Park, these coastal-dependent use provisions are not applicable.<sup>50</sup>

The second is that the LCP only allows “resource dependent, scientific, educational and passive recreational uses” in dune ESHA. The Commission has historically understood

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<sup>47</sup> IP Section 23.11.030: “Coastal-Dependent Development or Use. Any development or use that requires a permanent location on or adjacent to the ocean” (and note that 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.”)

<sup>48</sup> Per LUP Recreation and Visitor-Serving Facilities section page 3-2: “Coastal-Dependent Recreation: Ocean swimming, ocean and pier fishing, boating, surfing, sunbathing, beach activities, clamming, nature study, and scuba diving”; and “Non-coastal Dependent Recreation: Recreational activity such as baseball, basketball, bowling, golf, swimming (pool), tennis, and roller skating.”

<sup>49</sup> Nor are OHV activities coastal-dependent under the Coastal Act, including inasmuch as OHV activities take place at a variety of non-coastal locations, including inland dune sites like the Imperial Sand Dunes (aka Glamis) in California’s Imperial Valley where OHVs have access to some 200 square miles of dunes for OHV recreation.

<sup>50</sup> Note that even if these provisions applied to the Park, which they don’t, vehicular/OHV use is not a coastal-dependent use, as some have argued. In fact, driving cars and riding 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 or the LCP. Indeed, DPR operates eight inland OHV areas, none of which are sited on, or adjacent to, the sea.

such activities as nature study, scientific research, habitat restoration, and passive recreation to be resource-dependent in certain ESHA contexts, including dunes when such activities would not significantly disrupt habitat values (e.g., boardwalks and trails). With respect to passive recreation specifically, the Commission has a long history of allowing for such low intensity uses in ESHA as resource-dependent uses that won't lead to significant habitat disruption,<sup>51</sup> finding, as a representative example:<sup>52</sup>

*Trail development may be considered a form of nature study or similar resource-dependent activity because: (1) it is a development type that is integral to the appreciation and comprehension of the biophysical elements that comprise an environmentally sensitive habitat area; and (2) the trail is dependent upon the presence of the natural area resource through which it passes to provide a nature study experience.*

And third, vehicular recreational uses, including OHV uses, are *not* resource-dependent uses, and even if they were, they *are* uses that significantly disrupt dune ESHA at the Park.<sup>53</sup> With respect to the former, one may ride OHVs in non-dune and non-beach areas, including as is evidenced by the several dozens of inland OHV areas in California that are neither beach nor dune.<sup>54</sup> Therefore, it is not an activity that depends on being within such ESHA to function, and does not constitute a resource-dependent use. While some have argued that OHV use is resource dependent (as well as coastal-dependent) because it is taking place in beach and coastal dune areas, simply because some activities are enjoyed at the beach or in coastal areas does not make them “resource dependent” or “coastal-dependent.” This argument would expand resource and coastal-dependent development or uses to any development that one might prefer to do along the coast, such as a build a home with an ocean view, into a resource or coastal-dependent development. Such an interpretation is not consistent with (and would frustrate the intent of) the Coastal Act's (and corresponding LCP's) ESHA

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<sup>51</sup> The following is a non-comprehensive list of some of the projects the Commission has approved that include passive recreational and interpretive development in ESHA: CDP 2-07-018 (Sonoma County Regional Parks multi-use path); CDP 3-01-101 (Del Monte Beach boardwalk); 3-01-003 (Grover Beach boardwalk); CDP 3-87-258 (Asilomar State Beach boardwalk); CDP A-3-SLO-04-035 (PG&E paths); CDP 3-05-071 (Morro Bay Harborwalk); CDP A-1-MEN-06-052 (Redwood Coast paths); 80-P-046-A1 (Humboldt County trails); CDP 3-00-092 (Monterey Dune recreation trail); CDP 1-07-005 (Crescent City Harbor trails); CDP 3-97-062 (Sand City bike path); CDP 3-06-069 (Fort Ord Dunes State Park paths); CDPs 3-98-095 and 3-98-095-A1 (Elfin Forest boardwalk); CDP 6-06-043 (Otay River Valley Regional Park trails). Of course, each project has its own sets of facts and contexts, including ESHA and LCP contexts, but the above gives a sense of the some of the Commission's previous actions on this front.

<sup>52</sup> See CDP 3-09-068 (Arana Gulch Master Plan).

<sup>53</sup> Any argument that driving vehicles on sand and dune ESHA is inherently dependent on such sand and dune ESHA because riding on the sand/dunes is a unique form of vehicular and/or OHV use is circular and without merit. Acceptance of such an argument would make the LCP and Coastal Act's ESHA protections meaningless.

<sup>54</sup> In addition to the 8 other OHV parks operated by State Parks covering nearly 150,000 acres in California, there are some 70 other OHV areas in California, most operated by the Federal Bureau of Land management and National Forest Service.

requirements. And with respect to the latter, as explained in more detail in the Habitat Resources section, OHV use leads to significant adverse impacts to dune and beach environments, both generally and at the Park specifically, thus also failing the second ESHA test.

In sum, vehicular/OHV use is not an allowed use in ESHA under the LCP, and thus vehicular/OHV is not allowed at the majority of the Park under the LCP. The only Park area subject to the County LCP that is not ESHA is the flatter beach area extending north of Arroyo Grande Creek to the City of Grover Beach city limit line. In that beach area only, vehicular/OHV use is not precluded in the same way, and the question there becomes one of whether that use and intensity of use can be accommodated in that area consistent with resource protection (see also the ESHA analysis that follows on that point).

### **County LCP Park-Specific Provisions**

Despite the fact that the LCP does not allow vehicular/OHV use in ESHA at the Park, the LCP includes a series of provisions that some have argued suggest that, even if that is true, OHV use is *still* allowable in ESHA at the Park per the LCP. That is inaccurate, and bears some discussion. As indicated, when the LCP's LUP was originally adopted locally by the County in 1981, the LUP proposed to close the entire Park to vehicle use and camping unless a management plan was submitted by State Parks and approved by the County. The identified management plan was intended to be the mechanism to address coastal resource management in relation to vehicle impacts at the Park. However, in considering the proposed LUP, the Coastal Commission found that the LUP's proposed policies and standards related to OHV use did not adequately protect ESHA, and thus the LUP was not approved at that time. In denying certification of the original LUP, the Commission was also primarily concerned with appropriately locating Park access points and OHV staging areas in order to reduce adverse coastal resource impacts from any potential vehicular uses. In particular, this included vehicular impacts on non-vehicular recreational beach use in the more northerly part of the Park and concerns about Arroyo Grande Creek habitat resources. At the LUP hearing, the Commission directed staff from the Commission, the County, and State Parks to develop a solution for these access point, staging area, and use intensity issues. In response, the agencies worked together and with other interested parties to evaluate and develop strategies to address the core issues raised by potential continued vehicular use (including OHV and camping uses) on the beach and in the dunes, and how they might be accommodated while also protecting coastal resources.

Ultimately, there were no definitive decisions nor agreements about that core dilemma at that time, some 40 years ago, and the same ultimately applies equally today. Rather, the parties only agreed at that time that they did not want to delay the entire LUP/LCP certification over this issue. Instead, and to avoid full closure of the Park to vehicular use as proposed by the County through its proposed LUP/LCP, State Parks applied for and the Commission approved CDP 4-82-300 to define basic and temporary operational parameters for the Park in 1982. Importantly, and in large measure because of the context in which it was derived, CDP 4-82-300 was structured *not to* permanently codify

Park uses and intensity of use parameters. Rather, it was structured to identify interim and temporary allowable uses and intensities of such uses, particularly related to how the Park was accessed by vehicles. It also set in motion a series of requirements designed to help resolve the core question regarding what types of uses could potentially be allowed and at what locations and intensities, including vehicular/OHV use, at the Park. Thus, the CDP was approved with interim terms and conditions prior to LCP certification so as not to delay the rest of the LCP, and so as to put in place a process to update the LCP once decisions were made. The base Park CDP requires LCP amendments to bring the LCP into conformance with decisions made through the CDP process. In other words, the conceptual framework underpinning the CDP approval was to allow the LUP and LCP to be certified following approval of the interim measures under the CDP, and then to ensure that Park operational parameters were updated moving forward in the LCP, including so that the LCP could be applied to CDP decisions related to Park use and intensities of use.

As a result of these uncertainties at the time of LCP certification, the LCP includes some policies that reference both the Park itself and OHV uses. The policies were certified when the County did not want to hold up LUP/LCP certification over Park issues. These policies are primarily geared towards providing direction to State Parks' need to finalize Park use parameters, and they explicitly mirror (and indeed explicitly reference) the Commission's base CDP that reflected the same concerns. Namely, it was clear that there was a conflict under the Coastal Act and thus there would also be a conflict under the LCP, once it was certified, between intensive recreational uses at the Park and resource protection. The CDP sought to strike an appropriate balance by, among other things, seeking to clearly delineate ESHA areas and identifying the need to develop a 'carrying capacity' of the beach and dune resources to support different types and intensities of recreational uses, such that final decisions could be made based on it.

The base CDP, and the Park-specific LCP policies associated with it, were developed as interim placeholders meant to be superseded by subsequent planning efforts, including a State Parks General Development Plan (or General Plan) update and LCP amendments. As previously detailed in this report, ultimately these core planning questions have not been resolved in the nearly four decades since the CDP was first approved and the LCP first certified, whether through the General Plan, the LCP, or the CDP, and the CDP continues to this day to authorize uses and intensities of use at the Park on only an interim basis.

In terms of these Park-specific policies themselves, LUP Coastal Plan Policies ESHA Policy 37 states that OHV use may be allowable in certain dune habitat areas "identified as appropriate for this use", including in conformance with the LCP's Recreation and Visitor-Serving Facilities policies:

***Policy 37: Recreational Off-Road Vehicle Use of Nipomo Dunes.*** *Within designated dune habitats, recreational off-road vehicle traffic shall only be allowed in areas identified appropriate for this use. Detailed recommendations concerning protection of the dune habitat within Pismo State Beach and Pismo*



*Vehicular Recreation area<sup>55</sup> are found in the chapter regarding Recreation and Visitor-Serving Facilities.*

As described above, the LCP already makes clear that terrestrial habitat ESHA encompasses the entirety of the Park, and also makes clear that only resource-dependent uses that do not significantly disrupt the resource are allowed there. Thus, the Policy 37 reference to such potential allowance in “designated dune habitats” in the “Nipomo Dunes” has to be to other areas in the Nipomo Dunes complex (which includes but occupies a much greater area than the Park) that might be dune but not ESHA, and not the Park.<sup>56</sup> Even assuming that the reference in Policy 37 was to dune ESHA at the Park, the policy then references Recreation and Visitor-Serving Facilities chapter for provisions affecting the Park. That chapter, in turn, describes the recreational vehicle issues at the Park. This includes problems associated with the intensity of recreation then occurring, and the corresponding need to understand the carrying capacity and level of use that these sensitive Park resources could support (see Coastal Plan Policies page 3-8):

***Pismo State Beach and State Vehicular Recreation Area.*** *These state park facilities attract over three million visitors annually according to the State Department of Parks and Recreation. The issues and concerns raised by development in these facilities are many, ranging from habitat protection and defining appropriate areas and types of recreation use, to controlling public access and protection of nearby private property. A detailed summary of information on these park facilities is presented in the final portion of this chapter. A final concern must be addressed in determining the appropriate level of recreational use: recreation carrying capacity. (The total use a recreational site can tolerate without a deterioration of the physical and biological environment or the visitors' enjoyment.) To adequately protect these resources, this concept should be utilized in location, siting and development of all recreational areas and facilities. The Coastal Act gives priority to preservation of environmentally sensitive habitat areas over the provision of recreational opportunities; however, many highly used recreational areas within the coastal zone are in or adjacent to sensitive habitat areas, including Morro Bay, Oso Flaco and Dunes Lake and the Pismo Dunes. This situation gives the state park system a dual role in providing recreational opportunities while protecting environmental resources. The determination of carrying capacity is a complex process, requiring consideration of many variables. While some habitat areas (such as dry sandy beaches) can tolerate a high intensity of daytime recreational use, others (such as wetlands)*

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<sup>55</sup> At the time, vehicular use was occurring at Pismo State Beach extending south from Ocean View Avenue (and fronting portions of both the Cities of Pismo Beach and Grover Beach), but such vehicular use between Ocean View and West Grand Avenues was discontinued in 1980, and vehicular uses are not allowed north of West Grand Avenue to this day. Also, at the time, what is now known as ODSVRA was known as the Pismo Dunes State Vehicular Recreation Area. As a result, older references may use variations of these terms when referring to the Park.

<sup>56</sup> For example, some of the dunes inland of the Park are not mapped as ESHA, leaving open this possibility.

*can tolerate only a very low level of use. It is necessary that the recreational carrying capacity for all recreation areas be determined, monitored and readjusted as conditions warrant.*

The paragraph above describes the sometimes inherent tension between providing public access and recreational opportunities versus the protection of sensitive coastal environments. It also recognizes that State Parks has a particularly important role in navigating this tension through carrying capacity analysis. The paragraph defines this analysis as the “total use a recreational site can tolerate without a deterioration of the physical and biological environment or the visitors’ enjoyment.” It also requires such analysis to be continuously undertaken to allow for readjustments based on new information and site conditions.

The chapter then further describes the issues facing the Park, and explains that that description is meant to help a reader understand how the Park-specific LCP policies were developed and how they are to be understood (see Coastal Plan Policies page 3-10):

*Due to the major significance of planning for recreational development within the Pismo Beach and State Vehicular Recreation Area, a detailed summary of the background information used in preparing the recommendations is provided below. The detailed standards are found in the South County Planning Area (Recreation category) portion of the [LUP].*

The Coastal Plan then provides even more detailed prescriptions for the Park. First, it describes its popularity, referring in part to its unique recreational offerings associated with vehicular/OHV and camping uses, including for visitors from across Northern and Southern California and the Central Valley. Next, it describes the significant natural resources upon which such recreation was taking place. It also goes into detail on the conflicts and adverse impacts that vehicular use was having on these natural resources and the community of Oceano (Coastal Plan Policies page 3-12):

***Conflicts and Adverse Impacts.*** *High intensity recreational use of the Pismo Beach State Park and Recreation Vehicle Area has led to inevitable conflicts between types of recreational use and degradation of the environment. Conflicts exist between the types of vehicles used within the dunes and along the sandy beach (i.e., street legal vehicles, off-road vehicles, ATC's, etc.). A major source of these problems is uncontrolled access to the beach and dunes. On the beach, this problem has led to difficulty with regulation enforcement, density control of beach camping and vehicle circulation. In addition, a major conflict exists between unrestricted vehicular use, particularly by off-road vehicles, and the Oceano residential community.... Vehicle use of the beach is viewed by many as incompatible with other more passive recreational uses. Traffic accidents and*

*vehicle code violations on the beach are frequent, with traffic control and accident investigation occupying much of the park ranger's staff time.<sup>57</sup>*

To address these issues and impacts, the chapter describes the need for State Parks to prepare a carrying capacity study to understand “the amount of recreation use that an area can support without causing excessive damage to the physical environment and lessening visitor enjoyment” (Coastal Plan Policies page 3-12):

*The overriding concern within the dunes is resource protection, because the unique flora of much of the inland dunes is being severely degraded by recreational vehicle use. The sensitive dune vegetation deters wind erosion and stabilizes dunes. Disturbance of this vegetation by off-road vehicles leads to dune destabilization. In sensitive areas such as Dune Lakes and Oso Flaco Lake, such destabilization results in excessive sedimentation of these important wetland habitats. ...*

*The carrying capacity contained in the [State Parks'] 1975 General Development Plan raises several issues which must be further evaluated... Certain factors must be recognized in development of the two state park units [i.e., ODSVRA and Pismo State Beach]. These are: 1. The Nipomo dune-wetland complex is a unique, but fragile ecosystem. 2. Historical use of the dunes has included surf fishing, clamming, and walking along the beach. These uses should not be precluded by other uses of the beach and dunes. 3. Recreation vehicle use is the dominant recreational element and will continue within the two park units, consistent with availability of staffing and facilities of the State Department of Parks and Recreation. 4. Continued use of the dunes by off-road vehicles has led to environmental degradation of this habitat and has eliminated historical daytime uses. ... The critical decisions on the extent and intensity of recreational use is dependent on the ability to minimize the impacts of off-road vehicle use. Documented research has clearly shown that uncontrolled and indiscriminate off-road vehicle activities can eliminate critical areas of vegetation.*

In sum, while the Coastal Plan Policies' Recreation and Visitor-Serving Facilities chapter acknowledged the popularity of vehicular use, it also recognized the adverse impacts such use was having on natural resources and on other forms of traditional lower-intensity beach recreation. Because of this, the chapter goes into depth on the need for an update to the Park's General Development Plan (GDP) that could evaluate what types of uses could be provided for and at what intensities while protecting these beach, dune, and other resources – with resource protection clearly identified as the overriding concern – and in compliance with the newly certified LCP. The chapter concludes by saying that the detailed policies for the Park are found in the South

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<sup>57</sup> These same tensions and issues exist today, including in terms of the nature of the recreational use in relation to accidents. In fact, and for example, for 2019 (and according to the San Luis Obispo Grand Jury Report and State Parks' data), the last full year where such data is available, 237 vehicle accidents were investigated at the Park, resulting in 44 severe injuries and 6 fatalities.

County Area Plan, which, in turn, includes ten policies (i.e., Area Plan Policies 4 through 13 described below) governing the Park.

Building off the discussion in the Coastal Plan's Recreation and Visitor-Serving Facilities chapter, the South County Area Plan's Park-specific policies also describe the need for State Parks to update the Park GDP in accordance with the LCP and the base CDP. Specifically, Area Plan Policy 4 requires the GDP to identify a variety of recreational opportunities to minimize conflicts, to ensure that such recreational offerings were being undertaken in a manner that could be appropriately enforced and patrolled by State Parks, and was protective of sensitive resources, public health, public safety, and community values. If such findings could not be made, Policy 4 explicitly says an interim moratorium on vehicular use may be instituted:

***Area Plan Policy 4: General Development Plan Revisions.*** *The General Development Plan (GDP) shall be revised in accordance with the Local Coastal Plan. The plan should identify a variety of recreational opportunities with use areas separated where possible to minimize conflicts. Passive recreational uses and nature study uses should be provided for in the sensitive vegetated areas restricted from OHV use. Approval of the GDP for inclusion into the County's LCP, or approval of a coastal development permit for a development within either Pismo Beach State Park or the Pismo Dunes State Vehicular Recreation Area, shall be subject to a finding that the State Department of Parks and Recreation is making a commitment for sufficient manpower to ensure resource protection, ordinance enforcement and access control in conformance with the conditions of Coastal Development Permit No. 4-82-[300]. Should the terms and conditions of the coastal permit not be enforced or accomplished or should they not be sufficient to regulate the use in a manner consistent with the protection of resources, public health and safety and community values, then under the county's police powers, the imposition of an interim moratorium on [OHV] use may be necessary to protect resources while long-range planning, development of facilities and requisition of equipment and manpower is completed.*

In short, Area Plan Policy 4 speaks to the need to resolve the underlying use and intensity of use issues that exist to this day, and explicitly references CDP 4-82-300, which itself stands for the same premise, including its requirements for finalizing such use and intensity of use issues. Importantly, Area Plan Policy 4 also speaks to the potential for prohibiting OHV use under the LCP if the base CDP is insufficient for "the protection of resources, public health and safety and community values"; which arguably is the current situation, as described further in this report.

The remainder of the Park-specific policies describe other requirements, many of which are meant to serve as reference for further evaluation as part of the expected (at the time) updated GDP preparation and review process (which, again, also reference the overlapping requirements already identified for that type of analysis per CDP 4-82-300). These policies are geared towards reducing, at a minimum, the issues with vehicular uses at the Park, and looking to a different set of uses that could be accommodated

consistent with resource protection. For example, as part of this evaluation and change to the mix of allowed uses, Area Plan Policy 13 requires that camping, hiking trails, equestrian centers, and passive use areas be provided:

**Area Plan Policy 13: Other Recreation Users.** *Non-[OHV]-dependent uses such as camping, hiking trails, and passive use areas shall be identified and developed. Equestrian centers shall be identified. Parking areas for this day use shall be incorporated.*

Similarly, Area Plan Policy 7 describes back dune and beach camping opportunities at the Park that should be part of such analysis, where such camping is only allowed if it can be provided consistent with the capacity of the Park to accommodate same while adequately protecting Park resources. Area Plan Policy 7 states:

**Area Plan Policy 7: Alternative Camping Areas.** *Alternative camping areas subject to the numerical limitations of Coastal Development Permit No. 4-82-[300] may be appropriate in the dunes area and beach. These are dependent upon assurance that scattered sites will still allow for adequate environmental protection throughout the dunes.*

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

*Beach camping in conformance with the numerical limitations of Coastal Development Permit No.4-82-[300] shall be permitted where it can be established that: a) administration of the entire park unit would not be adversely affected, b) control of total users can be maintained within acceptable carrying enforcement/ capacity. The General Development Plan must identify area(s) for beach camping which would minimize conflicts with other users of the sandy beach. (It is estimated each campsite can accommodate from five to eight persons). Consistent with the provisions of Coastal Development Permit No. 4-82-[300], this limit can be adjusted either upward or downward based on monitoring of the impacts of this use.*

*In addition, to the camping facilities for [OHV] users, the GDP must identify overnight and day use areas for non-[OHV] users, including hikers, horseback riding, etc.*

*Peak OHV use on the six major weekends must be closely monitored to evaluate the impacts. Monitoring data shall be reviewed jointly by State Department of Parks and Recreation, the county, Department of Fish and Game and the*

*Coastal Commission on an annual basis. Long-term reduction of the peak use may be necessary to ensure adequate resource protection.*

Also as part of this evaluation, Area Plan Policy 8 requires that “sensitive habitat areas shall be identified and fenced, consistent with the provisions of Coastal Development Permit No. 4-82-[300] and the stabilized dune areas.” In other words, Area Plan Policy 8 provides an even more protective policy than the base CDP as it applies to sensitive habitat areas under the LCP, requiring that they be identified and put off limits to these high intensity vehicular uses. Given the LCP calls out nearly all of the Park as sensitive habitat, the upshot of Policy 8 is that that portion of the Park is actually *required* to be put off limits to vehicle/OHV uses by the LCP.

And finally, Area Plan Policy 9 describes OHV use and states that such use is only to be allowed in the unfenced areas identified in Area Plan Figure 4, as well as outside of any designated natural or vegetated areas. It also states that OHV use is to be allowed within the County-owned La Grande property<sup>58</sup> from the Sand Highway west to the sandy beach:

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

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

There has been a great deal of discussion of Area Plan Policy 9 and Figure 4 over the years, including litigation specific to this issue as it applies to the La Grande property, but also questions about how the South County Area Plan’s Combining Designations Map can show all of the Park as terrestrial habitat ESHA (within which vehicular/OHV use is not allowed) and then the Area Plan’s Figure 4 shows an OHV riding area in part of the Park. These issues are best understood as part of the overall narrative described above, wherein the LCP and the base CDP were always intended to be an interim starting point for determining appropriate uses and intensities of use at the Park, where they could then both be updated to reflect final decisions rendered to that effect.

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<sup>58</sup> As described earlier, the County owns almost all of the almost 600-acre La Grande property, with some 41 smaller private inholdings within that area, and State Parks currently allows Park operations in this area even though there is no lease or other sort of contractual arrangement with the County to use their land in this way.

Specifically, the LUP was certified in 1984, two years after the CDP was approved. Area Plan Policy 9 states that riding activity is only allowed in “identified unfenced vehicular use area ... identified in Figure 4”. LUP Figure 4, in turn, identifies: (1) the Pismo Dunes Natural Preserve, (2) the Oso Flaco Lakes Area (which the CDP identified as off-limits to riding activity), *and* (3) the La Grande property *and* the shoreline south of Pier Avenue<sup>59</sup> (i.e., the CDP-identified interim access location and route) as buffer area, which LUP Policy 9 says is “designated natural area...required for habitat protection...”. However, LUP Policy 9 also explicitly says that OHV use within the La Grande property “shall be limited to the Sand Highway west to the sandy beach” in order to minimize conflicts with the protected Dune Lakes area to the east and the preserve to the north. The policy concludes by stating Area Plan Figure 4 “indicates a buffer area along these critical interface areas.” Finally, Area Plan Policy 10 states that the management and use of the La Grande property shall be “reexamined periodically to establish the most appropriate management capability”.

In short, the Area Plan figure and its related policy text are in conflict as it relates to the La Grande property, where the figure shows it all to be off-limits to OHV use, whereas the text identifies that about half of it is allowed for such use.<sup>60</sup> Add to this the fact that all of the Park is designated as terrestrial habitat ESHA by the Area Plan, within which OHV use is actually prohibited by the LCP, an additional layer of conflict exists. And the base CDP’s terms and conditions further accentuate the conflicts regarding the La Grande property’s proper use. While the CDP allowed for part of the property to be used for riding, it also designated the level and intensity of such use allowed as interim (and also designated the northern access and staging areas adjacent to the property as interim), subject to additional carrying capacity analysis. The fact that that the LCP, which was adopted *after* the CDP was approved, designates the La Grande property, and the beach adjacent to it, as natural habitat buffer (which, based on evidence of vehicular/OHV impacts, as discussed in this report, is not compatible with vehicular use) suggests that, at a minimum, the LCP’s longer term goal is to phase out vehicular use in this area and create a larger and continuous protected dune area.<sup>61</sup>

In this context, the LCP’s statement that riding activity is allowed between the shoreline and the Sand Highway should be understood as a statement that the LCP recognizes that riding activity was at the time then allowed in a portion of this area pursuant to the CDP. But it also must be understood in the broader context that such allowance was and is *interim* until both the CDP and LCP are amended to designate the final allowed

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<sup>59</sup> Note that the County’s LCP only applies to the area extending north to about two-thirds of a mile past Pier Avenue, and thus does not apply to the area extending from that point to West Grand Avenue (which is subject to the City of Grover Beach LCP).

<sup>60</sup> Currently, all of the La Grande property within the OHV fence line (other than protected islands within it) is open to OHV use, inconsistent, at the least, with the clear requirements of Area Plan Policy 9 and Figure 4 that unequivocally prohibit OHV use in all areas not west of the Sand Highway.

<sup>61</sup> In any case, although there have been some discussions over the years, the County has not to date applied for a CDP to effect any sort of outcome at the La Grande property (e.g., whether that be to authorize current uses and intensities of use, or to close it off to such use, or something in between (e.g., to close it off inland of the Sand Highway)).

use and intensities of use at the Park, including as it relates to the County's La Grande property. Figure 4 suggests that at the least the entire northern Park area (i.e., from the southern boundary of the La Grande property extending north) is to be protected dune, while a portion of that area is currently open to vehicles and OHVs. Either way, it is clear that the LCP was intended to be amended after such final decisions were made through the base CDP process, both because the base CDP requires such LCP amendments to codify conclusions, but also because the LUP (which was certified after the CDP) identified La Grande as a buffer area.<sup>62</sup>

Thus, the LUP was written at a time when the framework for Park management, including determining where access, staging, and riding were to be located, was interim in nature to reflect the interim status of the CDP and the unsettled status of uses and intensities of uses at the Park. Furthermore, LUP Policy 10 includes language specifying that management of the La Grande property was required to be periodically reexamined to determine the most appropriate management capability. This reaffirms the interim status of OHV use in the La Grande property and suggests that different conclusions about La Grande's use could, and would, be ascertained in the future. This policy's inclusion further supports the position that while LUP Policy 9 limits any allowable riding in La Grande to the area between the sea and Sand Highway, other conclusions about proper use in consideration of coastal resource protection needs

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<sup>62</sup> Commission staff has previously informed the County and State Parks of its understanding of the LCP policies governing the La Grande property's use. In particular, in anticipation of State Park's 25-year lease expiration in 2009, State Parks sought to acquire the La Grande property from the County. In 2007, prior to the proposed sale, the County requested Commission staff's opinion on the relevance of Figure 4 and the LCP more broadly to the proposed La Grande Tract sale. The County requested that Commission staff respond to County staff's then-position that Figure 4 was "background information and advisory, but not regulatory or a critical component of the LCP." In response, Commission staff sent a letter to County staff stating that, based upon past actions regarding the CDP and the LCP, including the fact that Figure 4 and the LCP were adopted by the Commission after approval and subsequent amendment to the CDP, it was "Coastal Commission staff's opinion that Figure 4 was intentionally included within the certified LUP to reflect the long-term objectives shared by the County and the Commission for this sensitive dune habitat area, which included phasing out of the northern access route for OHV use and restricting OHV use on County owned land." Therefore, "contrary to the County staff's presumption that Figure 4 should be viewed as background information only, it is the Commission staff's opinion that both Figure 4 and the associated LCP policies establish important standards that are applicable to the use and development of the County owned lands at issue." The letter concluded that it was Commission staff's opinion that selling the La Grande property to State Parks for the stated purpose of retaining OHV use would be inconsistent with the land use designation for that site as an area required for habitat protection, as designated by Figure 4.

The letter further explained that Commission staff construed the LCP to convey an overarching intent, at the time of adoption, to eventually phase out riding at the La Grande property. This is because the LCP's objective at that time was to, at a minimum, move the access, staging, and riding areas to the south if such uses could be provided there consistent with resource protection. After such a move, the La Grande property would no longer be accessible by vehicles coming through the Park from the north, and would instead be a County-owned protected dune area adjacent to other protected areas. The letter notes: "Thus, the relevant LCP policies and Figures reflect the interim status of the OHV and camping use patterns in effect at the time of certification, and the County and the Commission's long term desire to provide increased protection of sensitive dune habitats, among other ways by relocating the OHV staging area to the south, and establishing a buffer area on all County owned lands."



could be made in the future, given the need to eventually finalize the various operational and management parameters discussed above.

More broadly, and with respect to the overall conflict in the Area Plan where the whole Park is ESHA within which vehicular/OHV use is not allowed but the Area Plan includes a figure and text that purports to accommodate at least OHV use in a portion of the Park (and some text alluding to the possibility of same), there is an undeniable conflict. On the one hand, the LCP is clear that ESHA is not an appropriate place for such uses, but on the other, the LCP appears to condone same in certain Park locations (e.g., in Area Plan Policy 9 and Figure 4), and alludes to vehicular/OHV use more broadly. In terms of the latter, at least, this appears to be solely in terms of potential future evaluations and future CDP, GDP, and LCP updates, which also applies to Area Plan Policy 9/Figure 4.

While this interpretation is reasonable, and defers to the base CDP for conclusions about what is and is not allowed, arguably, there remains some latent LCP Area Plan conflict with respect to vehicular/OHV use in ESHA. The LCP's own conflict resolution provisions essentially provide that the Area Plans govern in the case of such conflict, but these are all Area Plan provisions, and thus are treated equally. In order to resolve this potential conflict, the Commission must look to the Coastal Act and to interpret the LCP consistent with the Coastal Act, from which it derives its statutory authority.<sup>63</sup> This is particularly true in cases where an LCP might allow for something that the Coastal Act does not. Thus, these policies must be read to be consistent with the requirements of the Coastal Act. And Coastal Act Section 30240 clearly does not allow for non-resource-dependent use in ESHA (and vehicular/OHV use is not resource dependent, as described earlier). In addition, neither the Coastal Act nor the LCP allow *any* use that significantly disrupts ESHA, and vehicular/OHV use does just that. Thus, the Coastal Act prohibits vehicular/OHV use in ESHA, and prohibits all use that significantly disrupts ESHA resources. Therefore, to the extent that there may be an internal conflict in the LCP, it must be resolved in a manner that is consistent with the Coastal Act. As a result, while there are confusing and potentially conflicting LCP provisions related to vehicular and OHV use at the Park, when viewed through the lens of Coastal Act consistency, the provisions of the LCP that protect ESHA consistent with Coastal Act requirements must be given effect.

### **County LCP Conclusion**

Taking all of the LCP's background information, discussion, and policies together, while it can all be rather circular – cross-referencing other LCP policies, which cross-reference the CDP's conditions, which themselves cross-reference the LCP – it is clear that the LCP designates the entirety of the Park south of Arroyo Grande Creek (other than the active agricultural areas) as ESHA. In past cases, the Commission has only found a very limited type of uses to be dependent on ESHA resources. These include low-intensity access and recreation uses (such as interpretive trails), nature study, scientific research, and habitat enhancement/restoration. These same types of uses are identified in the LCP as allowed uses in ESHA. Off-highway vehicle use has never been

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<sup>63</sup> Again, see *McAllister v. Coastal Commission* (2009) 169 Cal.App.4th 912,

found to be one of these uses, nor is it so-designated in the LCP, because it is not in any way dependent on dune ESHA resources.<sup>64</sup>

At the same time, because the LCP also acknowledges that OHV use does take place in the Park, and because some of the above-described LCP policies refer to such vehicular use and the need for the carrying capacity analysis and General Development Plan process to identify sustainable OHV use limits and location, some argue that the LCP doesn't specifically preclude OHV use. The evidence available today demonstrates that the impacts associated with OHV use are so significant that there is not *any* capacity for OHV use in the Park given the known impacts to ESHA, air quality, and environmental justice as documented in this report. And, where there are internal LCP conflicts or ambiguities, LCPs must be interpreted consistent with the Coastal Act, which provides LCPs with their statutory authority. The Coastal Act and the LCP's ESHA sections are clear that only resource-dependent uses that don't significantly disrupt habitat values are allowed in ESHA. Vehicular/OHV use is not dependent on ESHA resources *and* it results in significant habitat disruption, and thus under the Coastal Act and the LCP, vehicular/OHV use at the Park is prohibited in ESHA. Given that OHV use is currently only provided by State Parks in areas deemed ESHA, continued OHV use at the Park is not consistent with the LCP.

## **E. Conclusion**

In conclusion, both the City of Grover Beach and San Luis Obispo County LCPs seek to maximize public recreational access to and along the shoreline, but require such access be undertaken in a manner respectful of constraints. These constraints include the fundamental constraint that intensive recreational pursuits, such as vehicular/OHV use, are not allowed in ESHA. Only more limited low-intensity and interpretive recreational pursuits may be allowed in ESHA. At the same time, both applicable LCPs acknowledge that the Park's northern beach area (as distinct from the dunes and the southern beach area) extending from Arroyo Grande Creek to West Grand Avenue is not categorically ESHA, and this is confirmed by the Commission's Ecologist Team (again, see Exhibits 9 and 10). These are critical habitat distinctions that dictate where and what type of recreation is allowable at all at the Park. In essence, more passive and interpretive recreational pursuits are allowed in Park ESHA areas south of Arroyo Grande Creek, while more intensive recreational uses could potentially be accommodated in non-ESHA flat beach Park areas north of the Creek, consistent with the Coastal Act and LCP.

After having established the legal standard of review for this CDP review in the above discussion,<sup>65</sup> the next key question is to more fully understand the nature and sensitivity

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<sup>64</sup> Again, for example, State Parks currently operates eight other inland State Vehicular Recreation Areas, none of which take place in, or depend on, dune ESHA, and there are some 70 other OHV areas in California, including inland dune sites like the Imperial Sand Dunes (aka Glamis) in California's Imperial Valley where OHVs have access to some 200 square miles of non-ESHA dunes for OHV recreation.

<sup>65</sup> This section describes the legal standard of review that is pertinent to the Commission's evaluation and deliberation on the issues at the Park under the Coastal Act and the LCPs. Some suggest that another legal standard of review that applies to the Commission is the state OHV law, as codified in Public Resources Code (PRC) Section 5090 et seq. However, these provisions of the PRC are not the standard

of the resources affected, as well as to understand the effects that current recreational use is having on those resources. Thus, the sections that follow first help describe the public recreational use context at the Park, then evaluate the resources at stake beyond the LCP mapping/provisions that make almost all of the Park ESHA, and provide a resource-based corroboration that such ESHA determinations are in fact warranted, and then describe some of the impacts that Park operations are having on that ESHA and coastal resources in general. All as a means of better understanding what types of uses and at what intensities can be allowed at the Park consistent with the Coastal Act and the LCPs, which is the key question before the Commission in this CDP review.

#### 4. Public Access and Recreation

##### **A. Applicable Coastal Act Provisions**

Coastal Act Section 30604(c) requires all development located between the sea and the first public road to be consistent with the public recreational access policies of the Coastal Act. As mentioned previously, Coastal Act Sections 30210 through 30224 specifically protect public access and recreational opportunities. These overlapping Coastal Act policies clearly protect public recreational access to and along the beach/shoreline and to offshore waters for public recreational access purposes, particularly free and low-cost access. And the applicable LCPs mirror these Coastal Act provisions. Importantly, the Coastal Act and LCP direction to maximize access and recreational opportunities represents a different threshold than to simply provide or protect such access and opportunities, and is fundamentally different from other like provisions in this respect: it is not enough to simply provide access to and along the coast, and not enough to simply protect access; rather such access must also be maximized. This terminology distinguishes the Coastal Act in certain respects, and provides fundamental direction when public recreational access issues are raised, as they are here.

At the same time, while a fundamental tenet of the Coastal Act is to protect and provide for maximum public access and recreational opportunities along the coast, that direction is qualified inasmuch as such access must be provided in a manner that protects fragile 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(a) explicitly requires that the Coastal Act's public access provisions "be implemented in a manner that takes into account the need to regulate the

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of review for the Commission. The Commission's standards of review here are the Coastal Act and LCPs. Thus, as a preliminary matter, the Commission may not make a determination here based on the requirements of Section 5090.

The Commission is nevertheless aware of the requirements of Section 5090 et seq., and believes that its actions implementing the Coastal Act are not in conflict with those requirements. As described later in this report, the OHV laws and the Coastal Act both protect public access and recreational opportunities, albeit the OHV laws focus primarily on OHV recreation. Both also ensure that allowed recreational use does not damage the underlying resources in an unsustainable manner.

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.” These questions are central to the issues before the Commission in this review.

## **B. Park Recreational Offerings**

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 almost 5,000 Park acres (for comparison, the Park is nearly 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 and beach camping.<sup>66</sup>

As the only California coastal State Park to allow vehicles to drive on dunes and beach sand, the Park provides a unique public recreational access opportunity, and it is very popular for RV and car camping 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.<sup>67</sup> Because of the uniqueness in its recreational offerings, and particularly related to vehicular recreation, the Park has a very loyal user group that is passionate about the Parks’ recreational offerings, particularly for OHV use and car camping on the beach.

The Park also offers a low cost alternative for these visitors, with a day-use fee for vehicles of \$5 and an overnight camping fee of \$10, both of which are lower than State Parks fees at other park units (e.g., where even parking a vehicle in a State Parks parking lot typically costs at least \$10, and camping is often \$50 or more). Of course here, camping on the beach is more basic without identified spaces (although there are a series of restrooms on the beach), but at \$10 it is indeed a very low cost overnight option along the California coast. That said, although there are people who camp in tents, according to State Parks officials, most of the camping at Oceano Dunes is via RVs, camping trailers, campers, and similar equipment. In the past, the Commission has acknowledged that RV and similar types of camping do not represent lower-cost camping due to the cost of the RV and similar required equipment, which prices out many of lesser means.<sup>68</sup> The Commission has found that the cost of entry to this form of

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<sup>66</sup> Street legal vehicles are allowed access to the entire lower beach, and OHVs and camping are allowed along roughly 4.5 miles of beach and in about 1,300 dune acres total (or over 2 square miles) of the Park.

<sup>67</sup> DPR indicates that the five-year average for visitation (i.e., 2015-2019) was 1,434,833 people per year, and that the Park was accessed by some 264,042 street-legal vehicles and 142,376 off-highway vehicles (over 400,000 vehicles in total) in 2013.

<sup>68</sup> Including during the Commission’s 2014 Public Workshop on Lower Cost Visitor Serving Accommodations, where the Commission found that, when factoring in the “cost of entry” to RV camping (i.e., when including the cost of purchasing or renting an RV, cost of gas/maintenance/insurance, and cost of entrance fees), RV camping does not constitute a type of lower-cost accommodation. Specifically,

camping means it should not be categorized as a lower-cost visitor-serving accommodation as compared to traditional tent camping, and in some cases may even qualify as higher-cost. Thus, although the camping fee is very low, and there are those who take advantage of that low-cost offering, most of the beach camping is actually not lower cost due to the cost of entry into the equipment used. In any case, the low camping fee here for such an unusual beach camping experience is one that is both very popular and supported by the Coastal Act and the LCPs if it can be accommodated without underlying resource degradation.

As described more fully later in this report, the prime camping areas at the Park have been reduced in recent times by State Parks efforts to address dust problems. Although all roughly 1,300 acres of the OHV riding area can be used for camping, the reality is that most camping occurs in the flatter sandy beach portions of the Park, and really the prime camping area is located between Posts 3 and 4.5, a shoreline stretch of less than a mile. Beach camping is limited to 1,000 camping units at any one time by the base CDP, although State Parks has indicated that it has reduced that to 500 units due to the decreased space now available for such camping. Beach camping enthusiasts have thus asked State Parks to increase camping areas, including as part of the PWP. Ultimately, State Parks draft PWP does propose new camping areas, but these would be in new developed campgrounds that are not located on the beach.

Vehicular day use subject to a \$5 fee is also a low cost way to experience something unique, namely driving a car (i.e., a street-legal vehicle) on the beach, that is not offered in any other California State Park. Here, it is allowed along roughly six miles of beach at the Park, and the base CDP allows for up to 2,580 vehicles per day.<sup>69</sup> This activity is very popular, as seen above from State Parks use figures, both for those who want to traverse the beach in their cars, but also those who want to park and simply enjoy a beach day with their vehicle nearby. This activity is also very important for many users as ADA access, where these users passionately make the case that this allows them to be immersed in the beach and shoreline experience in ways that are different than other typical ADA beach access approaches (e.g. beach wheelchairs, wheelchair mats, etc.).

As to OHV use, also \$5 a day, there is a passionate group of users that come to the Park in order to ride OHVs on the beach and in the dunes, and have for decades. The vehicles used in those activities take many forms, from trucks and jeeps to motorcycles and quads and sand rails, but they share the common attribute of being able to navigate

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as of 2011, only 8.5% of U.S. households owned an RV. Purchasing an RV can cost anywhere from \$5,000 to \$300,000, with additional costs for maintenance. For the more than 90% of U.S. households that do not own an RV, it is possible to rent one. The cost of renting an RV in California, that sleeps five people, during the peak season, ranges from approximately \$240 per night to over \$650 per night. Therefore, when the cost of purchasing/maintaining or renting an RV is combined with the cost of gas (with typical RVs requiring a gallon of gas every ten miles) and campground fee, RV campgrounds are not typically considered lower-cost.

<sup>69</sup> Although State Parks indicates in its PWP that on average only 25% of this number of cars use the Park daily (i.e., 645 cars) with the exception of holidays and summer weekends when the number increases.

in steep and shifting sands. Many of these users describe this as an exhilarating recreational experience, where they can have fun driving around in the sand and up and down dunes, sometimes at a high rate of speed. Others take a more leisurely approach, including in larger OHVs (e.g., larger sand rails that might hold 4 to 6 people). In all cases, it is clear that the equipment has evolved over the years, and yesterday's jeeps and dune buggies are a far cry from the more super-charged vehicles available today for this activity; vehicles that allow users nowadays to go faster, further, and into more extreme situations than in the 1970s.

Historically, OHV enthusiasts indicate that there were many thousands of acres available for OHV activities in the past at Oceano Dunes, and that this area has been significantly reduced over time. And while it is true that OHV activities did take place over a much larger area historically, it is also true that such activities took place on a checkerboard of public and private lands, with and without landowner permission, most of which did not belong to State Parks. And it was only starting in the 1970s that State Parks initiated efforts to acquire and combine lands to create a contiguous State Park unit within which OHV activities could take place, ultimately making up the present day Park. And by the 1980s, when the Commission approved the base CDP, the Park configuration was essentially the same as it is today. The Commission's 1982 action did eliminate acreage then used for OHV purposes near Oso Flaco Lake due to habitat concerns, but at that time and until fairly recently the Park provided some 1,500 acres available to OHV use. The acreage has been reduced by nearly 200 acres recently by State Parks dust control efforts, but the Park still provides 1,306 acres available for OHV use and activities, an area of over 2 square miles.<sup>70</sup> And the base CDP allows a daily maximum of 1,720 OHVs (although State Parks indicates in its PWP that on average only 10% of this number of OHVs use the Park daily (i.e., 172 OHVs) with the exception of holidays and summer weekends when the number increases.)

OHV groups and enthusiasts have been clear in their comments over the years that they want a continuation of OHV use at the Park, and an expansion if possible. Some have explicitly requested that State Parks initiate a 'no net loss' policy for OHV use (and camping) areas, whereby if the available area is reduced (e.g., to address dust, air quality, and public health concerns, etc.), then another new area is opened up.<sup>71</sup> Perhaps not as obvious to some, many in the OHV community would also like to better partner with the Commission to help create an OHV park that meets their needs at the same time as being more environmentally sustainable and reducing associated coastal resource impacts. In this sentiment there is a begrudging acknowledgement that the issues associated with the use don't go away if the use doesn't go away, whether expanded or no net loss or even a reduced area, and there may be space within which

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<sup>70</sup> And State Parks operates 8 other OHV parks covering nearly 150,000 acres (some 225 square miles) in California, and there are some 70 other OHV areas in California, most operated by the Federal Bureau of Land management and the National Forest Service.

<sup>71</sup> Due to the fact that these use areas are bordered by developed land (e.g., Oceano) or protected ESHA, such a policy would not be possible consistent with the Coastal Act and the LCPs.

to partner.<sup>72</sup> While acknowledging and appreciating the overture, the issues here unfortunately cannot be addressed in this manner consistent with the Coastal Act and the LCPs, as described earlier. If the Commission were to continue the temporary authorization currently associated with the base CDP, however, such elements would deserve consideration.

Other groups have been clear in their comments that they want a Park that better protects the resources in it, including as their enjoyment of the Park is derived from the natural setting. To this point the Park provides important recreational access opportunities associated with its protected areas, including particularly the Oso Flaco Lake area which has a small day use parking lot that provides access to a boardwalk and trails that navigate in and around these resources, providing low-intensity passive recreational access. This area is especially popular for birdwatchers. This area also provides access to the more remote beaches in the southern part of the Park, where there are fewer visitors and they are mostly seeking the relative solitude and natural shoreline beauty provided there. In addition, the vast dunes are also visitor draws for hikers and others who want to experience these natural features up close, and indeed a trip to the interior of the dunes is a special experience, including providing oftentimes spectacular views of this unique and vibrant ecosystem and its relation to the ocean, both in and out of the riding area.

The Park is also popular with equestrians, who typically enter near West Grand Avenue and make their way along trails inland of the beach to the Pier Avenue area where they access the beach. Horses and cars don't mix well, however, and there can be user conflicts as a result. At the same time, equestrians too have asked that they be accommodated at the Park.

And finally, and perhaps most obvious, the Park provides for general beach access and related ocean activities, both with and without vehicles. On this point it is acknowledged that there is some inherent conflict between cars driving by and people attempting to enjoy themselves on the beach. And many have requested that general beach activities be given priority over vehicular beach activities, especially as it relates to having a car-free beach fronting Oceano (all as further discussed in later sections of this report). Others have suggested that such vehicular access is also critical, especially as it relates to ADA access, as discussed above. In any case, what is important to note is that the Park includes some 8 miles of shoreline and beach access, more than half of the beach area extending from Pismo Beach to Point Sal, and thus it is important for the sheer space it offers, but also in relation to being the primary beach area for the five-cities area, Guadalupe, and Santa Maria more generally.

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<sup>72</sup> And in a general sense, central to the concept is the idea of allowing OHV and camping use in the southern part of the Park that is accessed via a true southern entrance that can avoid issues associated with the existing entrances, including the need to cross Arroyo Grande Creek.

### **C. Conclusion**

There is no doubt that the Park accommodates a significant amount and a wide range of public recreational access activities, ranging from the more intense vehicular/OHV uses to the less intense passive recreation offered in the southern part of the Park near Oso Flaco Lake, and gradations in between (e.g., general beach access, equestrian use, etc.). In part that is due to the sheer space of the Park (over 7 square miles all told), but it is also substantially due to the incredible natural setting that provides the canvas on which such activities take place. The question is not whether these are all valued public recreational access activities, as it is clear that they are, and that different Park users enjoy the Park for different reasons. The public recreational access question for the Commission is whether and in what form can these activities be allowed under the Coastal Act and the LCPs.

Namely, applying the Coastal Act's public access and recreation policies requires an understanding that the requirements for providing maximum public access and recreational opportunities are tempered by the need to provide that access in a manner that doesn't lead to other coastal resource impacts, such as those caused by the overuse of the resources upon which such access is being provided. The Act does not stand for the premise that public access and recreation must be provided in all places irrespective of constraints. It also does not prohibit reducing areas currently used for recreational access purposes as necessary to address such constraints. Rather, the Act specifies the parameters for when it may be appropriate to limit and regulate such access, including for consistency with applicable requirements protecting coastal resources, as discussed in the subsequent analyses.

## 5. ESHA and Related Habitat Resources

### **A. Background**

One of the most fundamental constraints to the current recreational status quo is the rich habitat present at the Park. As previously described, and despite degradation caused by ongoing OHV and vehicular use, the Park represents a rich coastal resource area, and it has been predominantly designated as ESHA by the Coastal Commission in the certified County LCP in the early 1980s. In fact, the two applicable LCPs designate all of the Park as ESHA, other than the non-dune flatter beach areas between West Grand Avenue and Arroyo Grande Creek, and the active agricultural areas, as discussed above. This ESHA designation has been affirmed by the Commission countless times since certification of these LCPs through its CDP actions and annual reviews.

In fact, the Park is part of a larger, significant, and sensitive ecological system, namely the Guadalupe-Nipomo dunes complex. This complex extends along some 18 shoreline miles from Point Sal through Pismo Beach and has been identified as the largest such intact coastal dune ecosystem in the world,<sup>73</sup> and it is a federally designated National

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<sup>73</sup> Including by the Nature Conservancy, see: <https://www.nature.org/en-us/get-involved/how-to-help/places-we-protect/guadalupe-nipomo-dunes/>.



Landmark. Portions of this larger area have been identified as critical habitat for the threatened Western snowy plover (i.e., south of Arroyo Grande Creek), and this area supports other sensitive and listed species, including the California least tern, Steelhead trout, and Tidewater goby.<sup>74</sup> The dunes complex overall is one of the largest still remaining on the west coast of North America, occupying some 22,000 acres (or over 30 square miles), and providing habitat for over one-hundred special status species.<sup>75</sup> USFWS' Guadalupe-Nipomo Dunes National Wildlife Refuge property, some 2,500 acres, borders the Park to the south, with the nearly 3,000-acre Guadalupe Restoration Project site extending just past that to the Santa Barbara County border (at the Santa Maria River).<sup>76</sup>

## **B. ESHA Determination**

As discussed in the preceding section that lays out the Commission's standard of review for this CDP review, namely the Coastal Act and the applicable LCPs, one of the most significant challenges facing the Park is the fact that the LCP designates nearly the entirety of the Park (and all of the non-agricultural area south of Arroyo Grande Creek) as ESHA. In addition to certifying these LCP designations, the Commission has also repeatedly affirmed such ESHA status in its actions, including those relating to amendments to the CDP. For example, in the last base CDP amendment from 2001, the Commission found:

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

*As shown, one of the most critical functions of the dune system is its role as habitat for very unique flora and fauna. These are species which are specially*

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<sup>74</sup> Although the Federal and State Endangered Species Acts (ESAs) are directly administered by other resource agencies, the Coastal Commission has an independent authority under the Coastal Act to protect coastal resources generally, and ESHA specifically. In discharging this responsibility, the Commission has in the past found that ESA-listed species and their habitats are protected as ESHA, including listed species habitat present at the Park. Thus, in addition to the Park being almost all ESHA under the LCPs, which has been affirmed multiple times by Commission determinations, the Commission also affirms that the ESA-listed species and their habitat present at the Park all constitute ESHA.

<sup>75</sup> According to the USFWS' "Guadalupe-Nipomo Dunes National Wildlife Refuge Final Comprehensive Conservation Plan and Environmental Assessment" dated August 2016.

<sup>76</sup> The Guadalupe Restoration Project site was once the home of then Unocal's Guadalupe Oil Field back in the 1940s, but production there ceased in 1994, and restoration activities commenced in the late 1990s.

*adapted to the conditions and opportunities found in the dunes. Dune plants in particular play a special role by both stabilizing the dunes from the effects of wind erosion, and hosting rare fauna. However, as the natural dune system has been fragmented and degraded, the risk of extinction has increased for several species. Thus, each new impact within the dunes system has and will continue to contribute to the cumulative decline of these species. ...*

*Under the Coastal Act, the entire ODSVRA<sup>[77]</sup> is an environmentally sensitive habitat area. First, as discussed above, the ODSVRA is part and parcel of a significant and sensitive ecological system – the Flandrian component of the Nipomo-Guadalupe dunes complex. Since approval of Coastal Development Permit 4-82-300 in 1982, much has been learned about the important role of specific areas within the dunes, and how both vegetated and barren sand surfaces contribute to the overall functioning of the dunes habitat system – even when these areas are to one degree or another degraded. In addition, threatened species such as the western snowy plover have since been identified, further highlighting the importance of dune preservation in this area.*

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

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

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

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<sup>77</sup> Note that in past cases the Commission often referred to the Park generically as ODSVRA, including here in this quotation. However, as discussed and detailed earlier, more recent research shows that the Park is actually made up of portions of Pismo State Beach, County-owned lands, the ODSVRA, and private lands. As such, past references to ODSVRA, like this one, should be understood as references to “the Park”.

*The entire ODSVRA area has been identified by the Commission as an environmentally sensitive habitat area (ESHA).<sup>78</sup> Furthermore, the entire ODSVRA area is mapped as a sensitive resource area (which also constitutes ESHA per the LCP) in the San Luis Obispo County LCP (see Exhibit 3). ODSVRA is part of a significant and sensitive ecological system, the Nipomo-Guadalupe dunes complex, much of which has been preserved exclusively for habitat protection purposes. In addition, ODSVRA has been identified as critical habitat for the threatened Western snowy plover, and supports other sensitive species, including the endangered California least tern, Steelhead trout, and Tidewater goby, which are protected under the Federal and State Endangered Species Acts.*

And as part of this CDP review report, the Commission's staff ecologists Dr. Jonna Engel, Dr. Laurie Koteen, and Dr. Lauren Garske-Garcia (in addition to assistance from former staff Ecologist, Dr. John Dixon) have taken a fresh look at the habitats present at the Park. They assess past ESHA observations and conclusions, and ensure that the Commission has a current evaluation of these Park resources, based on scientific studies and facts available today, as it evaluates the CDP in this review. The Commission staff ecologists conclude that the Park represents a rich habitat palette that rises to the level of ESHA (except for the flatter beach areas extending north of Arroyo Grande Creek and the agricultural fields in the south).

This current review of natural resources at the Park has also allowed the staff ecologists to look very closely at the boundaries of such ESHA, including when evaluated through the LCP lens. They concur with the ESHA designations in the two LCPs, including as mapped, that the beach and dunes south of (and including) Arroyo Grande Creek still constitutes ESHA, but that the stretch of flatter beach north of the creek up to West Grand Avenue is non-ESHA beach area. The rising dune area inland of the flat beach area north of West Grand Avenue is also designated ESHA. (See the Commission's staff ecologists memo in Exhibit 9, and see the map of areas deemed ESHA in Exhibit 10; both incorporated verbatim as if stated by the Commission here.) The memo states:

*In a 2019 memorandum, Commission Senior Ecologist Dr. Laurie Koteen determined that the Oceano Dunes State Vehicular Recreation Area rises to the level of ESHA (Koteen, 2019). That determination noted that the Coastal Commission had certified LCPs that identify the area as ESHA, and that the Commission itself had found the area to be ESHA through multiple reviews and actions, including actions related to CDP 4-82-300 and its reviews over the years, as well as CDPs related to State Parks dust control efforts. Further, as indicated above, the San Luis Obispo County LCP explicitly maps and identifies almost the entire Oceano Dunes as ESHA (Figure 14). The only areas not explicitly mapped and identified as ESHA in the County LCP are the sandy beach areas (that are not dune) at Pismo State Beach north of Arroyo Grande Creek to*

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<sup>78</sup> See, for example, CDP 4-82-300 as amended, and Commission reviews related to its implementation over the years.

*the City of Grover Beach city limits, and the two active agricultural areas in the Oso Flaco Lake area. Similarly, the only areas that do not constitute ESHA under the City of Grover Beach LCP (the northern reach of Oceano Dunes) are the sandy beach areas (that are not dune) at Pismo State Beach between the City limit line and West Grand Avenue.*

*The information presented here corroborates the findings by Dr. Koteen and the LCPs that, with limited exceptions, the Oceano Dunes component of the Guadalupe-Nipomo Dunes Complex meets the definition of an Environmentally Sensitive Habitat Area under the California Coastal Act (Figure 15).*

For decades, the Commission has consistently and clearly affirmed the LCP designations of the Park as ESHA, and Commission staff's ecologists' current analysis comes to the same conclusion. Thus, when evaluating uses and intensities of uses at the Park, the Commission must find those uses consistent with these ESHA designations.

As described previously, the Coastal Act and LCPs both require that the only allowed uses in ESHA be dependent on the resource itself, and that such use be sited and designed in a manner so as to not significantly disrupt habitat values. Thus, allowable development in ESHA must pass a two part test: 1) it must be a resource dependent use; and 2) it must be sited and designed so as to not significantly impact ESHA habitat values. Vehicular/OHV uses do not meet these tests for the uses allowed in ESHA, as follows: 1) as discussed in the preceding section, vehicular/OHV use is not resource dependent and is therefore not allowable in it; and 2) such use is significantly disrupting habitat values. Thus, vehicular and OHV uses are not allowed in ESHA areas in the Park, and thus the Commission finds that these uses must be discontinued in those areas. The following section provides some context for understanding the ESHA resources at the Park, and how they are affected by the Park's recreational uses.

### **C. DPR's Sensitive Species Management**

State Parks commits significant resources to protect habitat at the Park (estimated by State Parks to be around \$2 million per year), including working closely with both USFWS and CDFW on its plover and tern habitat protection programs. DPR routinely works with both agencies to ensure that protective measures are in place to avoid and limit take of protected species as much as possible in an environment where vehicles are driving over habitat areas. Each year, DPR provides to CDFW and USFWS a "Nesting Season Management Plan to Avoid Take of the California Least Tern (CLT) and Western Snowy Plover at Oceano Dunes State Vehicular Recreation Area". The Plan each year states "...DPR believes that it can continue to operate the SVRA and provide protection (attempting no take) of the listed species through the implementation of various protections, monitoring, and management measures as described...". The Plan then identifies a number of protective measures to guard against take of plover and tern, measures which are based on prior biological opinions and previous years' Plans. These measures include buffers around nests (i.e., installing protective fencing around individual plover nests of a 100-foot radius and 330 feet for terns), seasonal

fencing requirements, predator management, providing wrack inoculated with macro-invertebrates in nesting locations for plover chicks and nesting adults, monitoring (including banding individual chicks), and collection and reporting of data (including on individual nests, chicks hatched, chicks fledged, mortality rates and causes, predator impacts, and predator type and frequency). With respect to seasonal fencing, DPR fences off a designated area during the March through September least tern and snowy plover nesting season. This area, called the southern enclosure, is a roughly 300-acre protected area closed to public entry, including for vehicular/OHV use, for those seven months. DPR also seasonally closes off dune areas for plover and tern breeding in the Oso Flaco area south of the Oso Flaco Lake public boardwalk (the beach in this area remains open for public use year-round).

#### **D. ESHA Degradation**

Because of the complicated and dynamic natural environment at the Park, and the fact that the Park's dunes, creeks, beaches, and other natural resources serve as the location upon which high-intensity vehicular recreation takes place, habitat conservation is particularly difficult at the Park. Despite DPR's management efforts, death and harassment of listed species and destruction of their habitats still occur, which constitutes illegal "take" of these species under both the State and Federal ESAs.

ESA regulators have confirmed that such take, including such continued and ongoing take, is prohibited under the ESA. For example, in letters sent to State Parks in 2016, the USFWS described continuing western snowy plover deaths, including three western snowy plovers known to be killed by vehicles in just one 30-day period preceding their first 2016 letter, and at least three more killed in the next several months preceding their second letter. The USFWS referred to these and other mortalities of both western snowy plovers and California least terns that have occurred since 2001, and asserted that these constituted violations of the Federal ESA.<sup>79</sup> Similarly, in 2015 and 2016 letters,<sup>80</sup> CDFW identified seven documented California least tern deaths in 2014, and at least ten documented tern mortalities over the preceding fifteen years, which all represent significant violations of the State ESA. And in 2018, State Parks documented one tern and 36 plover deaths, with eight of them crushed and killed by OHVs.<sup>81</sup> In 2019, three terns and 26 plovers were killed, with several of these individuals found amidst tire tracks. Given that these numbers document only deaths, the total number of actual take, including other types of harm or harassment, is undoubtedly underestimated. And finally, vehicles continue to drive through Arroyo Grande Creek when it is flowing,<sup>82</sup> potentially affecting ESA-endangered tidewater goby and ESA-

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<sup>79</sup> See March 29, 2016 and December 22, 2016 USFWS letters in Exhibit 8.

<sup>80</sup> See July 3, 2015 and March 3, 2016 CDFW letters in Exhibit 8.

<sup>81</sup> Documented in State Parks' Nesting of the California Least Tern and Western Snowy Plover at Oceano Dunes State Vehicular Recreation Area, San Luis Obispo County, California, 2018 Season.

<sup>82</sup> For most of the year, Arroyo Grande Creek is contained behind a sand bar in a lagoon. For a period of time each year (days to several weeks) the lagoon is breached (typically by strong winter rains) and Arroyo Grande Creek is hydraulically connected to the ocean, typically during the winter/spring season.

threatened south central steelhead known to be present there. California red-legged frogs are also known to inhabit Arroyo Grande Lagoon, and are similarly under threat, particularly at night when some frogs migrate through upland habitat. In October 2020 the Center for Biological Diversity filed a lawsuit against State Parks for illegal take of ESA-listed species.<sup>83</sup> And to be clear, while the Commission does not implement the federal or state ESAs, understanding vehicular/OHV impacts to endangered species helps frame the context for the Commission's implementation of its obligations to protect ESHA under the Coastal Act.

The habitat impacts described above demonstrate that OHV use is incompatible with the preservation of dune and beach habitat resources and the species that live on them. Additional types of disturbance, further discussed in a later section of this report, include the manner in which such dune degradation contributes to air quality problems. Continual disturbance of the dune surface by vehicles reduces the cohesion of sand particles and the ability for vegetation to take root and hold the surface together, making them vulnerable to emission of dust particles, resulting in downwind air quality impacts. As stated by the Commission's ecologists:

*One of the most significant threats to Oceano Dunes is street legal vehicle and off-highway vehicle (OHV) use (Figure 13). Street legal vehicles and OHVs compact the sand, kill beach macro-invertebrates, and destroy wrack and the associated invertebrate community that serve as food resources for shorebirds and fish. Street legal vehicles and OHVs also cause dune erosion, crush and eliminate dune vegetation, and prevent vegetation reestablishment. Over the years, many snowy plover and least tern deaths from collisions with vehicles have been documented (Iwanicha et al., 2020; Iwanicha et al. 2019). Street legal vehicles and OHVs also break up the stiff surface layers that form on beaches and dunes, which facilitates the emission of particulate matter to downwind communities and erodes the dunes.*

*When foredunes and back dunes are impacted such that the vegetation is removed, the dunes revert to active moving dunes that often overtake and bury wetlands and other areas of sensitive dune habitat. This has happened in the area of street legal vehicle and OHV use at Oceano Dunes where wind erosion has resulted in blowouts larger than would naturally occur and masses of unstable sand now dominate the landscape. State Parks also uses heavy equipment to move sand for maintenance of vehicle riding areas, fences, and other facilities which interrupts natural coastal processes that would otherwise*

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<sup>83</sup> The Center for Biological Diversity sent State Parks a notice of intent to sue letter on July 7, 2017, as well as a supplement to that letter on July 10, 2020. Then, in October 2020, the Center filed suit against Armando Quintero, in his official capacity as Director of the Department of Parks and Recreation. The complaint alleges that DPR's "authorization of motorized activities and management of Oceano Dunes State Vehicle Recreation Area is killing, injuring, harming, harassing, and otherwise causing 'take' of snowy plover, in violation of the [Federal Endangered Species Act]." Complaint, paragraph 37, *Center for Biological Diversity v. Quintero*, No. 20-CV-09965 (C.D. Cal.).

*lead to the development of natural dune morphology, vegetation, and habitat functions.*

Not only are the Park's dunes themselves rare and productive coastal resources that support rare vegetation communities, but this dune habitat is also very sensitive to degradation from OHV use and activities. Many studies have evaluated the adverse impacts of OHV use on beaches, looking at both intertidal and upper beach zones as well as dunes. These studies found that OHV recreational activity causes the highest levels of environmental harm to beaches and dunes of *any* recreational activity.<sup>84</sup> The documented harm includes disturbing dune physical attributes and stability; destroying dune vegetation and leading to lower plant diversity and cover; habitat fragmentation, which can interfere with plant dispersal and open up habitat to edge effects; water quality impacts due to excessive sedimentation near wetlands and water bodies; and disturbing wildlife through noise, commotion, and tail pipe emissions, which can lead to avoidance behavior; directly injuring, or killing beach and dune fauna (beach macro-invertebrates and vertebrates), including sensitive species.<sup>85</sup>

And with respect to the latter, the 2016 USFWS letter to State Parks recommends instituting enhanced avoidance and minimization measures to avoid take, including potentially reduced speed limits and better enforcement of existing limits, additional beach closures, and cessation of special events. These issues and recommendations for better habitat management are also affirmed by the Commission's ecologists, and further described below.

Finally, CDFW completed an "Oceano Dunes Biodiversity Management Plan" (dated January 13, 2021; see Appendix A). While recognizing that uses and intensities of use can lead to dune and related habitat degradation, CDFW doesn't suggest that such activities cease, rather that State Parks pursue a Natural Community Conservation Plan (or NCCP) that can serve to accommodate such uses and intensities of use, and their documented habitat impacts, subject to mitigation. Until such NCCP is in place, CDFW recommends that all take of State-listed species be avoided. CDFW indicates that it hopes to have an NCCCP complete in five years, but it could take longer.<sup>86</sup> On this point it is again noted that the Coastal Act and the LCPs do not allow for the types of impacts to sensitive species and habitats that the NCCP program (or HCPs or CEQA) might. Rather, the Coastal Act and the LCPs do not allow for prohibited activities in ESHA, and do not allow for any activities that would significantly disrupt ESHA, whether

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<sup>84</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).

<sup>85</sup> See for example, Defeo, O., A. McLachlan, D.S. Schoeman, T.A. Schlacher, J. Dugan, A. Jones, M. Lastra, and F. Scapini: Threats to Sandy Beach Ecosystems: A Review, in *Estuarine, Coastal, and Shelf Science* (V.81; 1-12; 2009).

<sup>86</sup> CDFW's NCCP program began in 1991, or some thirty years ago. In that time, there have been 14 approved NCCPs (inclusive of 6 subarea plans) and 20 NCCPs in various stages of planning (inclusive of 10 subarea plans) in California.

such impacts are offset otherwise or not.<sup>87</sup> As such, an NCCP (or an HCP, or both) are not required to protect ESHA in the same way that the Coastal Act and the LCPs are required to protect ESHA, and thus can't necessarily serve to meet Coastal Act and LCP ESHA requirements.

### **Seasonal Exclosure**

State Parks maintains an annual seasonal habitat protection exclosure area for listed species in the southernmost seaward portion of the OHV riding area from March through September. A total area of approximately 300 acres is off limits to vehicles for that seven-month period. From October through February, this southern exclosure area is open to public use, including for camping, street-legal vehicles, and OHVs. This recreational use results in large areas of flattened terrain and barren sand with very limited scattered natural algal debris and vegetation. The TRT's Scientific Subcommittee, including the Commission's Senior Ecologists, has annually recommended that, at a minimum, the southern exclosure area's fencing be extended at least 100 feet inland in order to improve shoreline habitat. The Scientific Subcommittee noted that there was an increase in plover and tern nests in the years 2012 to 2014 when compared with 2011, which was likely a result of fence movements at that time. Moving the fence eastward and extending the exclosure area should have similar benefits for snowy plover productivity. In addition, for many years, the Scientific Subcommittee has also consistently recommended that DPR study whether making the exclosure permanent would improve plover and tern habitat quality and productivity. In making this recommendation, the Scientific Subcommittee has recognized that habitat nesting quality is potentially compromised due to the fact that a seven-month closure, and the subsequent five-month use period, may not allow enough time for the habitat to recover from OHV use, including as evidenced by the previously described macro-invertebrate study.

The Commission's staff ecologists believe that making the exclosure permanent and expanding protective fencing to other primary tern and plover breeding locations will improve habitat function. Specifically, there are a large number of plovers found in areas outside of the exclosure, including the very large number of nests, 66 in 2018, found outside, but adjacent to the exclosure.<sup>88</sup> In addition, the 2020 breeding season was very informative with respect to species use and needs at the Park, particularly regarding the size and location of the exclosure and of OHV activity affecting habitat more broadly. With the Park closed to vehicular activity (but still open to normal beach use) in response to the Covid-19 pandemic, there was a significant increase in plover activity, extending north to at least Post 3 (i.e., over a mile north of the seasonal exclosure, which was extant at the time as well).<sup>89</sup> The expansion of plover breeding and foraging

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<sup>87</sup> Again, see, for example, the published *Bolsa Chica* appellate decision described earlier.

<sup>88</sup> And similarly affirmed in 2020 when plovers were found nesting outside the exclosure in areas normally used for OHV, but were closed to such use due to Covid-19 precautions.

<sup>89</sup> In response, State Parks embarked on a series of unpermitted measures to disrupt nesting-related plover activities outside of the seasonal exclosure area by grading the beach/foredunes and employing a series of deterrence measures (including scuffing out potential nesting sites, placing mylar flags, and otherwise deterring plover nesting outside of the exclosure area). In early July the Commission's



activities outside of the enclosure is empirical evidence that reduced vehicle presence, a larger enclosure, or both, would be beneficial for plovers going forward. Based on this empirical evidence, it appears that plovers and terns nest in or immediately adjacent to the enclosure areas because OHVs are prevented from entering those locations. Thus, in the absence of OHVs, they would expand their nesting activities over a much larger area, including as evidenced by 2020 patterns. Evidence also suggests that the main seasonal enclosure is not large enough, given that birds elect to nest outside, but adjacent to it to the south (where OHV use is not allowed) and by observations of territorial disputes among plovers within the enclosure. If a larger area were available to plovers for nesting, so that crowding did not occur, the populations of plovers and terns would likely continue to expand.

In addition to the expanded enclosure boundaries, the Commission's staff ecologists also suggest improvements to the type of fencing State Parks employs to demarcate these areas to protect against mammalian predation.<sup>90</sup> For example, the fencing currently used on the enclosure should also be fortified to reduce the number of predators. And many public comments the Commission has received over the years voiced concern that the fencing State Parks uses requires significant maintenance and upkeep – work that necessitates State Parks using heavy machinery on and grading of the beach and dunes. Making the enclosure year-round, fencing off other areas of the Park where plovers and terns are known to breed, employing robust and strategic predator management, and doing so in a manner to require the least amount of grading and heavy machinery use, are all recommendations from the Commission's staff ecologists to prevent significant degradation of ESHA.

### ***Arroyo Grande Creek Crossing Issues***

All vehicles must cross Arroyo Grande Creek to access the OHV riding and car camping areas of the Park. While the creek does not flow year-round, when it does flow, the only way to access the riding area is to cross directly through the creek.<sup>91</sup> The creek provides habitat for steelhead and tidewater goby, among other fisheries. DPR indicates that it currently limits vehicle crossing of the creek when it is flowing, and that DPR provides drivers with a memo stating "it is prohibited to cross Arroyo Grande Creek in any other manner than by crossing the creek as close to the ocean waterline as possible and parallel to the ocean waterline. Driving upstream or downstream in the creek channel or in any other manner in the creek channel is prohibited. If the creek

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Executive Director issued to State Parks a Consent Executive Director Cease and Desist Order (ED-20-CD-01) that required State Parks to cease such activities.

<sup>90</sup> The Commission's staff ecologists have also raised other concerns regarding State Parks' predator management protocols, including trash collection (i.e., ensuring the large trash bins used for camping and day-use in the open riding and camping area have secure lids, which they currently do not, as these avian predators, sometimes in the thousands, are attracted to such nuisance), and the need for a comprehensive strategy that documents these protocols given that predation (from coyotes, raccoons, and skunks, etc.) is a significant issue affecting plover and tern health at the Park.

<sup>91</sup> As noted earlier, the County actually owns a roughly 5-acre property that is located at the normal rivermouth area, and some of the crossings may thus be taking place on County property, and not State Parks property.

crossing is posted 'closed', crossing the creek is prohibited." According to State Parks, the creek is typically closed to crossing when its depth would extend above the axles of vehicles attempting to cross.<sup>92</sup> NOAA fisheries is also working with DPR to address issues concerning steelhead and tidewater goby in relation to vehicles crossing Arroyo Grande Creek. In an email to DPR dated December 16, 2016, NOAA Fisheries informed DPR of a desire to revisit NOAA's 2008 letter regarding take of Steelhead trout, and discuss the possibility of incorporating seasonally-specific minimizations measures for vehicle crossing of the Arroyo Grande Creek during times when the creek breaches the sandbar and flows to the ocean, a time when steelhead are more likely to be using the creek while vehicles are still allowed to cross the creek.

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

At past annual CDP review hearings, numerous videos have been shown that were captured by visitors to the Park in which vehicles were seen to be driving through Arroyo Grande Creek at a variety of depths (sometimes being washed into the ocean), and also breaching the banks of the creek in such a way that caused the creek banks to erode considerably and to widen and lose the shape that contained and directed creek flows. Not only do the vehicles driving through the running creek raise concerns due to their direct impact on listed and other species, and creek water quality, but such actions also change the creek morphology to the detriment of natural processes as well. Vehicle crossings cause the creek to widen and meander beyond the area delineated by creek waters, and such destruction of creek banks has the effect of expanding and altering the creek bed in ways that reduce the water depth and limit the time period over which migration between the creek and ocean is viable for fish species. This may reduce species' ability to occupy the creek and to reproduce.

Moreover, any OHV use in the vicinity of the Arroyo Grande Lagoon that impacts its mouth and causes it to breach precipitously and rapidly, such as through impacts to the sandbar, may impact the federally endangered tidewater goby. Tidewater gobies spent most of their life cycle in coastal lagoons and in the lower reaches of coastal creeks. They naturally reside in low flow, low salinity refugia and spawn year-round in sandy

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<sup>92</sup> However, in general, steelhead can be found to move upstream during flows as shallow as six inches, which is lower than most vehicle axles. And it is not clear with what frequency DPR staff is present at the Arroyo Grande Creek during times of flow to enforce the rules regarding crossing the creek. In addition, because vehicles can enter and exit the Park after hours, and because DPR is not able to monitor crossing at all times, there may be more inappropriate crossing than has been identified to date, especially at night when all such impacts would be exacerbated.

sediments. Any disturbance that causes rapid lagoon breaching may have the effect of flushing tidewater goby from the lower reaches of the creek into the ocean and cause their demise. California red-legged frog is also present around Arroyo Grande Lagoon and Creek during this time period, and others, and the frogs themselves, as well as their egg sacs, may also be harmed by a precipitous breaching event. In any case, driving through the creek raises significant resource issues, not the least of which being it is not allowed by the Coastal Act and the LCP in this ESHA area to begin with, but also because it appears to lead to significant habitat disruption.

And finally, CDFW also has identified concerns with Arroyo Grande Creek crossing. As stated in the aforementioned 2021 Biodiversity Plan:

*Vehicles traversing the stream while it is flowing is a concern; fish migration timing is thought to primarily occur during high flows and during hours of darkness (NMFS 2013), making vehicle crossings of the flowing stream during the winter/early spring night hours a particular concern. In addition, fish may be impacted by artificial lighting associated with vehicles (Becker et al. 2013) as well as noise (Kunc et al. 2016); this could disrupt migration patterns, including increasing offshore or lagoon holding times.*

*Mortality of steelhead directly impacted by vehicle crossings/OHV activities have not been observed in the BMP [Biodiversity Management Plan] Area, though two adult steelhead carcasses were collected in March 2012 at or downstream of the lagoon (cause of mortality not identified). However, detection of carcasses of any life stage, if present, would be difficult to detect for the following reasons: 1) the aquatic nature of the organism makes the finding of dead specimens unlikely (rapid decomposition); 2) ongoing potential for natural predation and scavenging by wading shorebirds and other wildlife; 3) presence in generally low numbers; and 4) the species occurs in habitats that make it difficult to detect (surf zone, high stream flows, etc.). In addition, the quarterly fisheries studies conducted in the BMP Area are for census purposes and are not designed as impact studies.*

*Indirect impacts may occur from vehicles crossing the Arroyo Grande Creek that are leaking oil or other toxic fluids into the water. These impacts can greatly increase if a vehicle becomes stranded in the creek. Small amounts of oil or other vehicle fluids leaking into the creek mouth from a limited number of vehicles are generally diluted very quickly when the contaminated water enters the ocean. However, large amounts of fluids, either by a large quantity from one vehicle or small quantities from many vehicles during very low flows, could negatively impact water quality in the creek thus indirectly impacting any steelhead that may be present (CDPR 2008). In addition, a recent study has linked leachates from vehicle tires directly to acute mortality in coho salmon and other salmonids (Tian and Zhao et al., 2020). While all vehicle related contaminants may quickly become diluted in the stream environment by high flows or the ocean influence, brake dust, oil, and other pollutants that are*

*typically present on the underside of vehicles are likely being introduced and can have a negative impact to the ocean environment at the Arroyo Grande site.*

CDFW does not, however, recommend that stream crossings cease. It instead recommends that the trigger for disallowing such vehicular crossings be set at a 12-inch flow level.<sup>93</sup> However, as discussed above, the Commission's staff ecologists have documented that the geomorphological changes to the creek from such crossings, even at depths less than 12 inches, are also extremely damaging to this ESHA habitat, and a flow trigger does not prevent this degradation. Thus, in order to avoid significant disruption of this stream ESHA, vehicular crossings of Arroyo Grande Creek must be prohibited.

### ***Nighttime Vehicular Use***

Currently, there are no time limits for vehicular and OHV uses, and in fact vehicles and OHVs do operate into the night at the Park, including the aforementioned nighttime vehicular crossings of Arroyo Grande Creek. However, according to the Commission's staff ecologists, night driving on dunes and beaches likely cause serious adverse impacts to the native plant and animal inhabitants from artificial night light and noise. In fact, headlights and motorized vehicles introduce noise and artificial night light that causes extreme disturbances to the nighttime environment. Given that vehicular/OHV use in the dunes and on the beach is at its height during the day at the Park, the nighttime hours provide the only true reprieve from disturbance for organisms living in this area.

The pivotal role of light (electromagnetic radiation) in organismal biology raises the potential that there will be significant impacts on animals from artificial night lights. The sources of natural light are the sun, the moon, and stars. Light is used by plants and animals to infer a wide range of information from their environment. One of the most important roles of light for animals is regulation of their biological clocks or circadian rhythms on a daily, weekly, seasonal, and annual basis. Light information that contributes to the establishment of circadian rhythms includes daylength, light intensity, and light wavelength. In animals, eyes ranging from very simple to complex are the organ that collects light from the environment. Animals typically fall into one of several patterns of activity. Diurnal animals are active during the day; nocturnal animals are active at night; crepuscular animals are active at dawn and dusk; and 24-hour pattern animals have activity bursts during the night, dawn, and dusk. While humans are diurnal in nature, most other mammals are nocturnal (e.g., 80% of primates and all bats are nocturnal), crepuscular (e.g., rabbits, rodents, etc.), or have a 24-hour pattern where they are most active at night, dawn, and dusk (e.g., ungulates, large carnivores, some

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<sup>93</sup> CDFW also recommends that State Parks study the potential for using a temporary bridge structure when the creek is flowing, increased outreach to potential users when the creek is flowing to advise them of that and the potential for the trigger to be met, and studies more broadly about the effect of such crossing on creek habitat resources, and the potential for southern access points to better protect creek resources.

smaller carnivores).<sup>94</sup> Thus daily behavioral activities such as sleeping, foraging, eating, moving, and resting occur at different times for different animals such that a single habitat is partitioned into temporal niches regulated by light. Most predators are specifically adapted to hunt under particular light conditions (including in terms of intensity and wavelength), and in most natural habitats there is a distinct “changing of the guard”, from a suite of animals that are active during the day to a suite of animals that are active at dusk or dawn and/or at night.

Introducing artificial night lights, such as those from nighttime vehicular activities, to an area will change the ambient setting and may adversely impact animals. Likely effects of artificial night lighting on mammals include avoidance, disorientation, disruption of foraging patterns, increased predation risk, disruption of biological clocks, increased mortality on roads, and disruption of dispersal movements through artificially lighted landscapes.<sup>95</sup> Adding light to the night environment can range from a moderate disruption to a significant risk to survival. An important fact is that the time when night lighting is most important to humans (i.e., the hours at and just after dusk and just prior to dawn) are the same hours when changing natural light levels are critical to many animals. The majority of activity of many nocturnal and all crepuscular animals tends to occur during these hours.<sup>96</sup> Nocturnal animals, as the name implies, are active during the night. This means they conduct their business under varying darkness levels including under clear starry skies with an illuminance value of 0.001 foot-candle (fc)<sup>97</sup> as well as under overcast night skies with an illuminance value of 0.0001 fc.<sup>98</sup> And under a full moon (0.01 fc), nocturnal animals change their activity patterns, prey species stay under cover, and predator species do not actively hunt as frequently.<sup>99</sup> In short, artificial light from vehicles can adversely affect species, and reducing/eliminating lighting at night can be beneficial.

Noise or sound, just like the availability of food, also plays an important role in an ecosystem. Activities such as finding desirable habitat and mates, avoiding predators, protecting young, and establishing territories, are all dependent on the acoustic environment. A growing number of studies indicate that animals, like humans, are stressed by noisy environments and will avoid habitat and feeding or reproductive

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<sup>94</sup> Rich, C. & T. Longcore (Eds.) 2006. *Ecological Consequences of Artificial Night Lighting*. Island Press, Washington. 458 pgs.

<sup>95</sup> Id (Rich and Longcore 2006).

<sup>96</sup> Gaston, K.J., T.W. Davies, J. Bennie & J. Hopkins. 2012. Reducing the ecological consequences of night-time light pollution: options and developments. *Journal of Applied Ecology*. v. 49:1256-1266.

<sup>97</sup> A foot-candle is a measurement of light intensity and is defined as the illuminance on a one-square foot surface from a uniform source of light.

<sup>98</sup> Id (Rich and Longcore 2006).

<sup>99</sup> Id (Rich and Longcore 2006).

activities to escape it.<sup>100</sup> For example, the endangered Sonoran pronghorn avoids noisy areas frequented by military jets; female frogs exposed to traffic noise have more difficulty locating the male's signal; gleaning bats avoid hunting in areas with road noise.<sup>101</sup> When these effects are combined with other stressors such as drought, disease, and food shortages, noise impacts can have adverse impacts on the health and vitality of wildlife populations.<sup>102</sup>

At the Park all of these issues are in play with night lighting and noise making the species present here more vulnerable, and ultimately leading to a degradation of habitat values. Thus, not only are vehicular/OHV uses not allowed by the Coastal Act and the LCP in ESHA to begin with, but also nighttime activities only exacerbate the degree of significant habitat disruption engendered by same. For all of these reasons, the Commission's staff ecologists (and many environmental groups) recommend a prohibition on vehicular/OHV activity at night, including to allow for a biological respite from such activity.

## **E. Conclusion**

As described and documented above, vehicular and OHV use significantly degrades the fragile beach and dune habitats in which they are driven at the Park. Almost the entirety of the Park is defined as ESHA under the LCPs and Coastal Act, with the exception of the flatter (and non-dune) beach area extending north of Arroyo Grande Creek, and the two active agricultural areas in the Oso Flaco Lake area. Not only do these ESHA areas meet the definition of ESHA, these habitats are particularly valuable and distinct ESHA that is found in very few places in the coastal zone. In fact, the dune habitat constitutes one of the most significant dune resource systems on the entire California shoreline, if not in the world.

The Coastal Act and the LCPs prohibit non-resource dependent uses, including vehicular/OHV use, in ESHA as a matter of law. As a result, vehicular/OHV use is not allowed in ESHA at the Park. Thus, legally, there is no way for the Commission to find such uses consistent with the ESHA protection policies of the LCP and Coastal Act, even if the impacts caused by these uses were more limited, or could be mitigated.

Not only are these uses not resource dependent, but they also cause significant degradation to ESHA resources at the Park, including killing and otherwise harming sensitive species. In fact, vehicular and OHV use is documented not only at the Park, but in scientific literature, as being one of the most destructive types of uses that can

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<sup>100</sup> Shannon, G., M.F. McKenna, L.M. Angeloni, K.F. Crooks, K.M. Fristrup, E. Brown, K.A. Warner, M.D. Nelson, C. White, J. Briggs, S. McFarland & G. Witemyer. 2016. A synthesis of two decades of research documenting the effects of noise on wildlife. *Biological Reviews*. v. 91: 982-1005.

<sup>101</sup> Ware, H.E., C.J.W. McClure, J.D. Carlisle, & J.R. Barber. 2015. PNAS Online. A phantom road experiment reveals traffic noise is an invisible source of habitat degradation. <https://pdfs.semanticscholar.org/4553/85667d9a2568fcb39e0ca29c1991b289ca78.pdf>.

<sup>102</sup> Barber, J.R., K.R. Crooks, & K.M. Fristrup. 2010. The costs of chronic noise exposure for terrestrial organisms. *Trends in Ecology & Evolution*. v. 25: 180-189.

occur in dunes. They destroy dune structure, composition, vegetation, and related habitats. Thus, even if these uses could be allowed in ESHA, they cause significant disruption of ESHA habitat, inconsistent with the LCP and Coastal Act ESHA protection policies. The Coastal Act and the LCPs require that recreational uses be maximized, but only consistent with the protection of natural resources. In this case, vehicular and OHV recreation in rare and fragile ecosystems is incompatible with the protection of such ecosystems. Thus, such uses must be prohibited in ESHA.

And finally, the beach area extending south from West Grand Avenue to Arroyo Grande Creek is not ESHA under the Coastal Act or the LCPs.<sup>103</sup> Thus, this area in question a place where any of the more intensive recreational offerings can be considered in this CDP review. At the same time, however, any proposed Park uses – in the non-ESHA beach area or otherwise – need to also be understood in relation to other constraints affecting uses and intensities of use at the Park, which are further described in the sections that follow.

## 6. Air Quality and Public Health Issues

In addition to the ESHA issues described above, dust emissions and their effect on air quality and public health represent another key constraint at the Park. The APCD is working with State Parks to limit uses and intensities of use to protect air quality and public health, as described below.

### A. Dust Emissions

The causal relationship between vehicular activity on sand dunes and increased wind-blown particulate matter has been understood and documented for decades, including by State Parks.<sup>104</sup> And here, APCD, including working with CARB, has found that dust emissions associated with operations at the Park have resulted, and continue to result, in air quality problems inland of the Park, including 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. Between 2013 and August 2017, an APCD air quality monitor (often referred to as the CDF monitor or tower) located one-half mile inland of the Park near the residential community of

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<sup>103</sup> Again, this distinction between treating inland dunes as ESHA and generally not treating urban recreational beaches as ESHA is not uncommon on the California coast, and it speaks to the recreational uses that are typical at most beaches fronting more urban areas, such as the area to which this distinction applies in the north of the Park.

<sup>104</sup> In 1977, State Parks published a study conducted by an interdisciplinary team of University scientists on the threats to Inglenook Fen and Ten Mile Dunes in Mendocino County, now McKerricher State Park. The study found that under natural conditions, dune surfaces slowly build a surface armor of grains too large to be entrained by wind. OHVs break and churn this protective crust and expose smaller particles that are entrained by prevailing winds, promoting erosion of the dunes. The report recommended that OHV use be prohibited, and a subsequent management plan reflected that determination.

Nipomo, recorded two exceedances of the federal daily PM10 standard, 282 exceedances of the state daily PM10 standard, and six exceedances of the federal daily PM2.5 standard.<sup>105</sup> In addition, the federal and state standard for annual average emissions of PM2.5 is 12.0 µg/m<sup>3</sup>, and monitoring indicated that this standard, too, had been exceeded twice in this same time frame. Federal and state standards have also been exceeded at APCD's inland Mesa 2 monitoring station. Indeed, on certain days of the year, this area has the highest particulate matter concentrations and worst air quality in all of the United States.<sup>106</sup>

Two APCD studies<sup>107</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 further inland locations,<sup>108</sup> 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 (i.e., the same issues as documented by State Parks in their 1970s studies). 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, contributor 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.

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<sup>105</sup> The federal daily standard for PM10 is 150 micrograms (one-millionth of a gram) per cubic meter of air (expressed as 150 µg/m<sup>3</sup>) and for PM2.5 is 35 µg/m<sup>3</sup>. The California daily standard for PM10 is 50 µg/m<sup>3</sup>.

<sup>106</sup> Including at least four times in 2019 when Nipomo had the highest Air Quality Index rating of combined particulate matter and ozone concentrations in the country, according to the United States Environmental Protection Agency ([airnow.gov](http://airnow.gov) website).

<sup>107</sup> Including 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.

<sup>108</sup> For example, issues associated with dust from the Park have been identified in the inland population center of the City of Santa Maria in Santa Barbara County, as well as further south in the City of Guadalupe, also in Santa Barbara County. In fact, APCD states in its South County Community Monitoring Project report from 2013 that "Analysis of the project data also demonstrated that the dust plume from the coastal dunes often extends inland to Santa Maria. The data does show the agricultural fields in the Santa Maria Valley can occasionally be a significant source of airborne particulate pollution under some wind conditions. However, under the strong northwestern winds that produce particulate impacts on the Nipomo Mesa, the primary impact to Santa Maria is from the coastal dunes and not the agricultural fields." And the Santa Barbara County Air Pollution Control District (SBAPCD) has also raised concerns about the dust emanating from the Park and affecting areas in the County, stating in a previous comment letter submitted for the Commission's July 2019 CDP review hearing: "We remain deeply concerned about the air quality and human health impacts that the ODSVRA has on residents of Santa Barbara County, particularly in the areas of Guadalupe and Santa Maria." And more recently in a call with Commission staff in February 2021, the SBAPCD staff continued to voice concern regarding air quality impacts from OHV use on downwind communities in Santa Barbara County, including in relation to proposed OHV expansion at Oso Flaco Lake and Phillips 66 as part of State Parks PWP proposals.



## **B. APCD Rule 1001**

APCD Rule 1001 requires DPR to monitor PM10 and implement appropriate mitigation measures to meet state and federal air quality standards. Rule 1001 does not identify specific areas within the 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. APCD Rule 1001 consists of the following key elements:

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

Thus, among other things, Rule 1001 requires State Parks to implement appropriate dust control measures as part of a PMRP aimed at reducing particulate matter and meeting the Rule's dust reduction requirements. The coastal development permit authorizing State Parks dust control program was originally approved by the Commission in 2017 under CDP 3-12-050. This CDP authorized State Parks initially proposed approach to reduce particulate matter emissions pursuant to Rule 1001 requirements.

## **C. 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 allowed State Parks to retire up to 105 acres<sup>109</sup> of dune ESHA from vehicular, OHV, camping, and other non-habitat uses, including by fencing off and restoring these areas with native dune vegetation. 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. Finally, the CDP authorized State Parks to install and operate monitoring equipment to evaluate dust abatement effectiveness. State Parks' dust control program is meant to be adaptative, 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.

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<sup>109</sup> The CDP allowed up to approximately 100 acres of such mitigation, where 'approximately' was understood to be between 95 and 105 acres, and State Parks ultimately restored 104 acres under that authorization.

#### **D. 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 APCD on all technical air quality matters and recommendations related to the SOA, and to 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>110</sup> Namely, under the SOA, State Parks must ensure that activities at the Park: 1) don't 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.

At the time of the original SOA, air quality modeling suggested that roughly 500 acres of OHV riding and camping area, or roughly one-third of the pre-dust control 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. State Parks' PMRP states:

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

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<sup>110</sup> And subject to potential extension past 2023 if necessary to achieve required dust reduction and related air quality improvement.

*vegetation planting contemplated by the PMRP sensitivity analysis. The OHMVR Division, the SAG, and the SLOAPCD may also need to carefully consider and establish appropriate increments of progress towards reducing 2013 maximum 24-hour PM10 baseline emissions by 50%.*

Since then, even more recent SAG/APCD air quality modeling has suggested that roughly 800 acres, or more than half of the pre-dust control OHV/camping area, may need to be permanently retired from OHV/camping use and revegetated to meet APCD Rule 1001 requirements for dust abatement for air quality and public health reasons. In any case, whether it is a total of 500 acres or 800 acres or something in between, it appears clear that significant additional permanent dust control mitigation is going to be required by APCD in order to meet air quality and public health requirements.

The SAG recommended that the APCD approve State Parks' proposed PMRP, but with caveats, including directing State Parks to immediately restore a 48-acre foredune area currently used for OHV/camping use:

*SAG reiterates the urgency of moving forward immediately on the creation of the foredune restoration enclosure referred to in Section 6.2.1 in the PMRP and the required initial planting strategies. The SAG notes that the extent of the hypothetical foredune polygon shown in Section 6.2.1 of the PMRP (~23 acres) was identified solely for sensitivity analysis in the modelling of potential dust control measures. In comparison to nearby natural analogue reference sites at Oso Flaco Lake, however, the SAG believes that the extent of this polygon is insufficient to promote the development and restoration of a naturally functioning foredune ecosystem, would likely occupy approximately 48 acres (see Section 7.1 of the February 25 SAG Response Report). ... The SAG stresses that foredune development and restoration is a critical mitigation measure that could take several years to reach full effect. Enclosure of this initial restoration area should begin immediately.*

In November 2019, State Parks agreed to SAG/APCD's measures pursuant to the SOA, including permanently retiring the 48-acre foredune ESHA area from vehicular, OHV, camping, and other non-habitat uses; fencing this area off; and restoring and revegetating it. Since the SOA required DPR to immediately implement the foredune restoration, and since the acreage authorized for such permanent dust control mitigation per CDP 3-12-050 had been exhausted, the Commission issued two emergency CDPs in late 2019 and early 2020 to allow permanent dust control mitigation over the 48-acre area (ECDPs G-3-19-0053 and G-3-20-0013). In addition, and based on DPR's agreements with APCD, in early 2020 State Parks similarly applied such permanent dust control mitigation to another 4.2-acre dune ESHA area, while also deploying 40 acres of seasonal wind fencing. In July 2020, the Commission approved an amendment to CDP 3-12-050 (CDP 3-12-050-A1)<sup>111</sup> to authorize this APCD-required and State

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<sup>111</sup> The Commission was sued over its issuance of the ECDPs by the Friends of Oceano Dunes in February 2020, and was also sued by the same entity over its approval of the CDP amendment in July 2020. In addition, the Friends of Oceano Dunes sued the Commission and DPR over issuance of an

Parks-proposed dust control work, thereby authorizing a total of 156.2 acres of permanent dust mitigation via dune restoration through that CDP.

Thus, while State Parks has already removed over 150 acres of dune ESHA from the riding and camping area by that CDP, and has commenced vegetative restoration of these areas, significantly more such area may be required to be retired by the APCD to abate the acute public health problems according to APCD modeling to date. In fact, modelling suggests that some 800 acres may have to be permanently retired and restored to result in the needed changes to address the dust, air quality, and public health issues associated with vehicular/OHV activities at the site. That would be more than half the size of the 1,500-acre pre-dust control OHV and camping area, and if focused on the foredunes (which is where such permanent changes have been focused thus far), would effectively near eliminate camping as an option at the Park in the area where it is currently allowed, south of Post 2.

### **E. Dust Mitigation Efforts Limit OHV/Camping**

These DPR/APCD dust mitigation efforts have significantly affected OHV riding and camping opportunities. In fact State Parks dust control program has so far resulted in a reduction of OHV riding and camping of 174.7 acres,<sup>112</sup> resulting in a 12% reduction in riding and camping. While about 1,306 acres, or about two square miles, is still available to OHV and camping use, Commission and State Parks staff agree that the prime camping areas at the Park tend to be flatter, more to the north, and nearer the shoreline. The area that was most conducive to camping stretched from about Post 3 to about Post 6 and covered around 125 acres. The most popular camping area is from about Post 3 to Post 4.5 (a slightly less than one linear mile stretch of beach totaling about 50 acres). The 48-acre foredune restoration area eliminated camping from Post 4.5 to Post 6. The restoration area also includes a 100-foot buffer within which camping is also not allowed (but vehicles can still use this area for other activities, including OHV use), resulting in roughly 60 total acres where camping is no longer allowed. Thus, DPR's dust control work to date has resulted in the loss of about half of the available prime camping area, which now is limited to a roughly one-mile stretch of beach from Post 3 to Post 4.5.

### **F. 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

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ECDP in 2016 for implementation of DPR's 2016 dust control and monitoring measures. Friends of Oceano Dunes also challenged the Executive Director's determination that no CDP was required for DPR's dust control measures in 2017. The Friends of Oceano Dunes again sued the Commission over its action in approving CDP 3-12-050, in both San Luis Obispo County Superior Court and in federal court. Thus, the Commission has been sued by the Friends of Oceano Dunes six times since 2016 over the Commission's authorization of APCD-required and State Parks-proposed measures to facilitate State Parks' compliance with APCD requirements.

<sup>112</sup> 156.2 acres via CDP 3-12-050 as amended, and an additional 18.5 acres as part of CDP 4-82-300.

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>113</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 (see photos of such plumes in Exhibit 7).

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 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>114</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>115</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.*

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<sup>113</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.

<sup>114</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>115</sup> APCD's 2010 South County Phase 2 Particulate Study, page iii.

*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>116</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 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 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>117</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, 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*

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<sup>116</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.

<sup>117</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>.

*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.

## **G. Other Key Observations**

### ***Wind fencing***

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 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>118</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.*

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<sup>118</sup> L. Russell (2020). "UCSD Supplemental Report 2020: Preliminary Results from May 2020 Aerosol Measurements," September 20, 2020.

*Therefore, even if their samples had been collected using standard methods, the results would still only be of limited value.*

*Scripps collected their PM<sub>2.5</sub> samples using a novel sampler, which is not EPA-approved for PM<sub>2.5</sub> sampling and to our knowledge has never been tested; in fact, we are unaware of any other PM<sub>2.5</sub> 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 PM<sub>2.5</sub> 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 PM<sub>2.5</sub> 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 PM<sub>2.5</sub>BAM instrument, but some of the values depicted do not appear to match the values we measured.*

*Finally, **the report fails to recognize the science of how OHV activity contributes to the dust issue**, stating: "The association of high PM<sub>10</sub> and PM<sub>2.5</sub> 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)*

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.

## **H. Conclusion**

The Coastal Act states that air quality protection programs are the principal responsibility of local air pollution control districts (APCD in this case) and CARB, and requires the Commission to ensure that new development is consistent with these entities’ air pollution control programs and requirements.<sup>119</sup> While the Coastal 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

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<sup>119</sup> Coastal Act Sections 30414 and 30253(c).

Act requirements. To date, State Parks, APCD, and the SAG have all agreed that dune restoration is the most important potential means of addressing the dust control and air quality problems associated with vehicular/OHV use, and in other permit actions, the Commission has authorized the dust control measures proposed by State Parks and has found that limiting use in overused areas and dune restoration in ESHA are both Coastal Act and LCP consistent.

APCD has determined that current vehicular/OHV uses in the dunes are what lead to the dust, air quality, and public health problems emanating from the Park. The windy beach and dune environment are a natural phenomenon, but air quality scientists have determined that an *unnatural* phenomenon, namely vehicular/OHV degradation of the dunes, is what is leading to these significant air pollution problems. Although recreational activities are strongly protected by Coastal Act policies, the access and recreation policies also require that such activities be curtailed to protect public safety (see Coastal Act Sections 30210 and 30214(a)(3)) (see Exhibit 4 for Coastal Act provisions). In fact, the enumerated goals of the Coastal Act explicitly include protecting public health and safety by “protect[ing] the ecological balance of the coastal zone and prevent[ing] its deterioration and destruction” (Section 30001). And the applicable LCPs both reflect these same sentiments and must be interpreted consistent with the Coastal Act, from which they derive their legal authorities.

Here, APCD has found that the dune degradation from vehicular/OHV use is leading to significant air quality, public health and safety problems. Thus, despite vehicular and OHV use being a form of recreational access protected by the Coastal Act, as discussed below, the LCPs and Coastal Act require that such access be provided consistent with public health and safety. It is unfortunately the recreational use itself, in this case, that is a significant factor in creating the public health issues identified by the APCD at this particular Park.

## 7. Environmental Justice Issues

### A. Background

At its March 2019 meeting, the Commission adopted its Environmental Justice Policy (EJ Policy),<sup>120</sup> the goal of which is to integrate the principles of environmental justice, equality, and social equity into all aspects of the Commission’s coastal resource planning and regulatory program. Taking an environmental justice approach to coastal policy requires a fundamental re-thinking of who is connected to the coast, and how. Environmental justice stakeholders across the country who have been working in this policy arena for decades have also noted that wherever low-income communities and communities of color are concentrated in coastal regions, they are frequently disconnected from the coast by both social and physical barriers. Historic inequalities, as well as California’s growing population, changing demographics, socioeconomic forces, judicial decisions, and policy choices continue to shape development patterns

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<sup>120</sup> The Commission’s Environmental Justice Policy can be found at [https://documents.coastal.ca.gov/assets/env-justice/CCC\\_EJ\\_Policy\\_FINAL.pdf](https://documents.coastal.ca.gov/assets/env-justice/CCC_EJ_Policy_FINAL.pdf).

and population shifts that can serve to widen disparities in coastal resource protection and benefits. Not only is equitable access to and use of the coast for all Californians essential, so is protecting coastal resources more broadly for future generations.

More specifically, Coastal Act Sections 30107.3 and 30604(h) allow for the Commission to consider environmental justice when making CDP decisions:

**Section 30107.3.** (a) *“Environmental justice” means the fair treatment and meaningful involvement of people of all races, cultures, and 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 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.*

The Commission’s adopted EJ Policy helps to implement these statutes by guiding and informing 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, including 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>121</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 with respect to nine specific issue areas, one of which is habitat and public health, where the principles notes that these are often interrelated, stating:

*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.*

And another issue area regards public access and recreation, stating:

*Article X of the California Constitution guarantees the right of access to navigable waters for all people. The Commission also recognizes that equitable coastal access is encompassed in and protected by the public access policies in Chapter 3 of the Coastal Act. The Coastal Act’s mandates to provide maximum access and recreational opportunities for all, and to protect, encourage, and provide lower-cost visitor and recreational opportunities embody fundamental principles of environmental justice. The Commission reaffirms its long-standing commitment to identifying and eliminating barriers, including those that unlawfully privatize public spaces, in order to provide for those who may be otherwise deterred from going to the beach or coastal zone. The coast belongs to everyone, and access cannot be denied or diminished on the basis of race, ethnicity, income socio-economic status, or place of residence or other factors listed in the Policy Statement.*

In short, the Coastal Act’s environmental justice authorities and the Commission’s EJ Policy offer an important lens and framework upon which to make Coastal Act and LCP decisions, to ensure that CDP decisions do not unduly burden a particular underserved community with adverse coastal resource outcomes. The Commission recognizes the importance of providing for equitable coastal access and recreation consistent with coastal resource protection requirements regardless of an individual’s race, ethnicity,

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<sup>121</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 the Oceano Advisory Council to the San Luis Obispo County Board of Supervisors. Staff discussed these issues and received input from these groups for this CDP annual review as well, and also reached out to Central Coast Alliance United for a Sustainable Economy, or CAUSE, a prominent environmental justice organization focused on the Central Coast, including to make sure the groups were aware of their ability to participate in the public hearing.

sexual orientation, gender identity, income, or place of residence. The Commission also recognizes the disproportionate impact of climate change and sea level rise on certain communities with the least capacity to adapt.

Here, both proponents and opponents of the Park's status quo have raised substantive and procedural environmental justice concerns regarding the future of the Park. Substantively, many local stakeholders have raised environmental justice concerns over what they see as a loss of lower-cost passive recreational opportunities, increased vulnerability to sea level rise, poor air quality, damage to ESHA, and a depressed local economy all due to vehicular/OHV use. Procedurally, local residents have also raised issues with how their concerns have been heard and addressed by State Parks over the years, including in terms of outreach for the PWP, and that most of the suggestions they have made have not been reflected in the Park's current or proposed management measures.<sup>122</sup>

Conversely, OHV proponents raise concerns regarding impacts to their culture and traditions if their use of the only vehicular recreation area on the immediate coast of California were further restricted or prohibited. They cite the low day use fees (\$5 for street-legal vehicles) and low overnight camping fees (\$10) as a Coastal Act priority use, and say that passive beach use can easily coexist with vehicles, and that non-vehicular users also have other options on the coast. And, because OHV use at the Park predates some of the downwind residential development, some have said the impacted residents in those underserved communities should adjust or move. Ultimately, they argue that 'access for all' needs to extend to access for vehicular/OHV enthusiasts.

## **B. Identifying Communities of Concern**

In order to evaluate the distribution of environmental burdens and benefits, and the cumulative impacts on communities of concern, it is critical to understand the existing socioeconomic and demographic profiles of those communities as well as their environmental burdens. In this context, the terms "communities of concern" or "underserved community" refer to low-income communities, communities of color, and other populations that have higher exposure and/or sensitivity to adverse project impacts due to historical marginalization by government, discriminatory land use practices, and/or less capacity – financial or otherwise – to mitigate adverse impacts. To identify these communities, the Commission evaluated various quantitative and qualitative sources of information about communities surrounding the Park that are directly and indirectly exposed to its environmental impacts.

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<sup>122</sup> On this point, some local residents have asserted: that none of State Parks' statewide listening sessions in 2019-2020 for the PWP were conducted in the town of Oceano; that a recent survey which was supposed to be limited to Oceano residents was accessible to anyone online; that most of the suggestions they have made have not been reflected in the Park's current or proposed management measures; and that they submitted multiple comments, but say they do not see their suggestions or priorities reflected in State Parks' draft PWP, draft HCP, and supporting draft EIRs and draft EA.

Socio-economic and demographic data for the wide variety of Park users was not available, as visitors come from throughout California as well as out of state. Thus staff was not able to evaluate claims that the OHV riding community constitutes an environmental justice group. But the Commission has heard from individuals from low-income communities and communities of color burdened by pollution in other parts of California who benefit from coastal recreation at the Park. Providing coastal access for underserved communities is an important aspect of the Commission's public access mandate. However, 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.

Oceano, which is immediately adjacent to the Park, is an unincorporated community with a population of roughly 7,500. About 45% of its residents identify as Hispanic or Latino, and about a third (32%) of its population has an income less than two-times the federal poverty rate.<sup>123</sup> About a third of Oceano's population speaks a language other than English at home, of which 15% are considered linguistically isolated or speak English "less than very well" according to the U.S. Census Bureau.<sup>124</sup> The community was designated as an "Opportunity Zone" by Governor Brown in 2018 in an effort to increase private sector investment in this low-income community.<sup>125</sup> And finally, 20% of the people living in Oceano are considered to be housing burdened, low-income households, meaning several low-income households spend over 50% of their income on housing costs,<sup>126</sup> and 45% of Oceano's housing units are occupied by renters.<sup>127</sup>

Oceano is bordered to the south and the east by agricultural fields and the Phillips 66 oil refinery, and its central business district is located about a mile inland from the coast. The oceanfront section of town is defined by Pier Avenue, the western terminus of which is one of two main access routes to the Park. On high visitation days, traffic on Pier Avenue can create gridlock on the main street for hours, with large RVs, trucks, and trailers idling their engines as they inch toward the Park entrance. There are few storefronts in this section of town and most serve OHV users. Aside from the Park, the two largest land uses in the coastal section of town west of Highway 1 are industrial, consisting of an 11-acre regional wastewater treatment facility and a 58-acre County airport that accommodates smaller private planes. The community's only park, owned by the County, is a 1-acre grassy area with a playground located adjacent to the Oceano Lagoon near Pier Avenue seaward of Highway 1.

The other Park-adjacent community is the City of Grover Beach, which hosts the

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<sup>123</sup> Because the federal poverty level applies nationwide, areas with a higher cost 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>124</sup> U.S. Census Bureau, 2015-2019 American Community Survey Data, 5-year estimate, Table DP02.

<sup>125</sup> "Opportunity Zone" designation pursuant to the Tax Cuts and Jobs Act of 2017.

<sup>126</sup> According to CalEnviroScreen 3.0 data.

<sup>127</sup> U.S. Census Bureau, 2015-2019 American Community Survey Data, 5-year estimate, Table B25003.



northern vehicle entrance via Grand Avenue. About a mile north of Oceano, the city is upwind of the riding area, and therefore does not experience the same air quality issues as downwind communities. However, Grover Beach and Oceano have similar median incomes (\$67,742 and \$64,217, respectively) that are below both the County and the State average, as well a similar percentage of residents (32.1% and 32.3%) living below two times the federal poverty level. Grover Beach has a higher percentage of Hispanic/Latino residents (30%) than the rest of the county although not the State. Similar to Pier Avenue, recreational traffic on West Grand Avenue can get extremely heavy during the high season, and many retail storefronts cater to Park visitors. Over the years, Grover Beach has explored ways to build and diversify its economy, including in terms of increasing the number of hotels and lodging units to cater to tourists. Several approved projects are nearing ground-breaking currently. In fact, the City has partnered with State Parks on a large hotel and conference center facility that would be located just upcoast of West Grand Avenue that is designed to take advantage of the ocean and beach fronting location, but construction has not yet begun.

Downwind of the Park to the southeast is the unincorporated community of Nipomo, which is roughly 44% Hispanic/Latino, 23% of which have an income two times below the Federal poverty rate.<sup>128</sup> Further south and east, in northern Santa Barbara County, the cities of Guadalupe and Santa Maria are 90.4% and 76% Hispanic/Latino, respectively. These two communities have high rates of poverty, with 47% and 45% of the populations in Guadalupe and Santa Maria making less than twice the federal poverty level, respectively.<sup>129</sup> See Table 1 below.

Table 1: Demographic and Socioeconomic Indicators

	Oceano	Grover Beach	Nipomo	Avila Beach	Pismo Beach	Guadalupe	Santa Maria	San Luis Obispo County	California
Total population	7,487	13,535	17,601	1,311	8,180	7,451	106,224	282,165	39,283,497
<b>Race and ethnicity</b>									
White (% of total)	45.2%	60.5	49.1%	91%	80.6%	5.9%	16.4%	68.9%	37.2%
Hispanic/Latino (% of total)	44.9%	31.5	44.5%	4.4%	12.2%	90.4%	76.0%	22.5%	39%
Black or African American	1.0%	1.6	1.1%	0	2.8%	0.4%	1.2%	1.7%	5.5%
American Indian and Alaska Native alone	0	0.3	0.1%	0	0.3%	0	0.1%	0.5%	0.4%
Asian	6.3%	3.6	2.8%	4.6%	1.7%	3.1%	5.0%	3.5%	14.3%

<sup>128</sup> Id (U.S. Census Bureau).

<sup>129</sup> Id (U.S. Census Bureau).

## Oceano Dunes CDP Review

	Oceano	Grover Beach	Nipomo	Avila Beach	Pismo Beach	Guadalupe	Santa Maria	San Luis Obispo County	California
Native Hawaiian and other Pacific Islander alone	0	0.5	0.3%	0	0	0	0	0.1%	0.4%
Two or more races	2.6%	2.0	2.1%	0	2.4%	0.2%	1.2%	2.6%	3.0%
Some Other Race alone	0	0	0	0	0	0	1,272	0.1%	0.3%
<b>Other demographic and socioeconomic indicators</b>									
Linguistic isolation*	15.0%	6.9%	12.2%	0%	2.0%	34.8%	34.4%	6.0%	17.8%
Median household income	\$ 67,742	\$ 64,217	\$ 82,543	\$80,281	\$ 84,484	\$ 50,864	\$ 63,341	\$ 73,518	\$ 75,235
Individuals with income below 200 percent of the federal poverty level	32.1%	31.3%	22.8%	12.7%	17.0%	47.1%	45.1%	26.1%	31.0%

\* Linguistic isolation is measured by the population that speaks a language other than English and speaks English "less than very well" according to the U.S. Census Bureau.

Data source: U. S. Census Bureau, 2015-2019 American Community Survey Data, 5-year estimate.

### C. Environmental Justice Analysis

#### ***Procedural Concerns***

Meaningful engagement with underserved communities is a core component of the Commission’s EJ Policy. In 2018 and 2019, at the invitation of the Oceano Beach Community Association (OBCA), Commission staff (including members of the EJ Unit) toured the town of Oceano and portions of the Park and listened to the concerns from local residents. Since then, EJ staff has continued to engage with OBCA and the community, and has also been engaged with many other groups that work to resolve environmental justice issues at the Park, including Concerned Citizens for Clean Air, CAUSE, and the Dunes Alliance. These stakeholders have not felt that they have been heard by State Parks through its PWP outreach, and do not believe that State Parks has made any meaningful changes to Park management practices, their draft PWP or supporting documents to address their concerns.

Staff discussed these issues and received input from these groups, and others, for this CDP review. Staff also created and distributed FAQ sheets in both English and Spanish to environmental justice groups and stakeholders in January. The sheets answered basic questions about the Park and this CDP review hearing, included links to the staff

report and explained how to participate in the process. Staff also developed an Oceano Dunes webpage accessible from the Commission's main webpage that also went live in January, which included a range of materials designed to help these groups and others better understand the challenges affecting the Park, and the potential solutions, including documents associated with the Commission's direction to State Parks from 2019, Commission hearings on the matter since that time, State Parks draft PWP and supporting documents, and summary and FAQ documents in English and Spanish (available at <http://www.coastal.ca.gov/oceano-dunes/>). The goal has been to provide easily accessible materials in a variety of formats as early in the process as possible to allow all parties to meaningfully participate and share their views in these proceedings.

Beginning in December 2020, staff also reached out to elected officials, community leaders and senior City staff from the affected underserved communities themselves to understand their views regarding these issues, answer questions, and help them be as informed as possible about this CDP review and the hearing process, and how they and their constituents can best participate and be heard. Staff also posted all PWP and Oceano Dunes-related materials from July 2019 to present on the agency's dedicated webpage.

### ***Substantive Concerns***

Quantitative and qualitative information, including the lived experience of community members, is key to understanding existing environmental justice burdens on a community and the potential for new development to exacerbate those impacts. The underserved unincorporated community of Oceano, the neighboring city of Grover Beach, and the downwind communities of Nipomo, Guadalupe, and Santa Maria, have endured many burdens caused by off-roading for decades, while enjoying few if any of the benefits. The main substantive issues identified from lived experiences and quantitative information relate to the following concerns: 1) air quality and dust impacts; 2) public access and recreation; and 3) sea level rise and coastal hazards, all as described below.

#### Air quality impacts

The air quality impacts discussed in detail previously in this report fall disproportionately on downwind communities, including Oceano, Nipomo, Guadalupe, and Santa Maria. These underserved communities experience impaired air quality from the plume of fine dust that blows off a dune system whose geomorphology and cohesion is compromised and the dunes are denuded of vegetation. Indeed, the exceedances of state and federal air quality standards for PM10 on some days result in the worst air quality *in the United States* on the Nipomo Mesa.

These impacts, summarized in the previous section of this report, are well documented by the San Luis Obispo Air Pollution Control District. The South County Monitoring Project Report published by the APCD in 2013 confirmed that during high-wind events, the dust plume from the Park extends into the Santa Maria Valley, causing air quality to exceed state standards in the City of Santa Maria during nearly all northwest wind events, and to a lesser extent, Guadalupe, during high wind events. The particulate

matter from the dunes comingles with local sources of PM10 originating from agricultural sources surrounding these communities, but the two types of pollution are clearly distinguishable. As a result, the dust plume from the Park is exacerbating air quality impacts from agricultural operations in these communities, compounding the effect on public health. The Santa Barbara County APCD has expressed concerns to the Commission about the health risk this poses to its residents.

These air quality impacts present a classic environmental justice problem, wherein one group reaps a benefit (in this case OHV/vehicular use) while the impacts associated with it (in this case adverse air quality) disproportionately affect lower-income communities of color (in this case Oceano, Nipomo, Guadalupe, and Santa Maria). Those who work outdoors, such as fieldworkers and construction workers, are also at risk.

#### Public access and recreation

During the development of the EJ Policy, stakeholders told the Commission that lower-income communities and communities of color suffer from both formal and informal barriers that can make them feel isolated from and unwelcome at beaches and recreational spaces (e.g., whether from ‘No Parking’ signs, lack of public parking, lack of visual access, siting of highways and public works along coastal areas, or existing uses that make access uncomfortable or infeasible).

In this case, many in these Park-adjacent communities state that OHV use has all but eliminated opportunities for other types of beach recreation and enjoyment of the miles of sandy beach and coastal dunes. Community members express frustration that they have never enjoyed the same quality of public coastal access on par with other California beach communities because they say their beach functions as a “sand highway” for vehicles, rendering more typical beach activities, such as walking and picnicking on the beach, dangerous and/or unpleasant.

In addition to the direct impact that the vehicles have had on passive public access, members of the public have also shared that some of these vehicles display flags and symbols that have made them feel unwelcome at the Park. The Commission makes this observation not in an effort to limit free speech, but to recognize that certain symbolic displays, such as Confederate flags or sexualized images of women or automatic weapons on flags, can have as much of a chilling and exclusionary effect on public access as “No Trespassing” or “Private Property” signs. Such symbols that have represented historical oppression and violence can be informal barriers to access because they can alienate certain groups of the public. These displays can be perceived as antithetical to the shared vision of the Commission and State Parks on public lands, which should be a space that makes all visitors feel welcome.

Many community members stated that when the Park was temporarily closed to vehicles in 2020 during the early months of the Covid-19 pandemic, residents and visitors were able to use that stretch of coast as a traditional beach for the first time. People showed up in large numbers to walk, run, ride bikes and horses, fly kites, picnic and play in the sand and surf. The Commission heard from locals who had never before

visited the beach because of the historic vehicle use there. This provided a brief window into what the future of Oceano Dunes might look like without OHVs as the dominant use.

Recreational and visitor-serving opportunities in Oceano are also stunted by the lack of community investment and limited economic development of the beachfront commercial area. Many community members also told the Commission that decades as a vehicular/OHV destination have precluded more robust economic growth and community services. Coastal cities' oceanfront areas are normally a city's most valuable and economically productive real estate. Yet the commercial development along the western terminus of Pier Avenue caters primarily to OHV use, consisting of three ATV rentals, two souvenir shops, a liquor store, a deli, a candy store, a firewood vendor, and several vacant buildings. As such, many in the community believe that the Park's focus on fostering vehicular recreation stunts other forms of local investment. A 2018 letter from San Luis Obispo County Counsel to State Parks underscored this, saying residents were impacted by the Park's operations and the two million annual visitors coming and going using a single street.<sup>130</sup> The County Counsel wrote:

*Residents must deal with sand tracked out of the park on vehicle tires and blown off their trailers as they depart Oceano. Residents must also deal with an increased crime rate, additional trash and periods of significant noise. In addition, local first responders and hospitals are impacted as a result of the operation of the ODSVRA.*

On this point, in recent years an increase in disruptive, unpermitted activities in the Park has further burdened the community of Oceano. This includes concerts and large-scale events which have contributed to an uptick in violent crime, and a series of significant OHV-caused injuries and deaths. According to a 2019 SLO County Grand Jury report, the County Sheriff reports that during 2019 there were 307 arrests by Rangers that resulted in jail time.<sup>131</sup>

For comparison, nearby Pismo Beach markets itself as 'a classic California beach town' and is entirely fronted by Pismo State Beach that is owned and operated by State Parks. At one time vehicles were allowed on the beach fronting Pismo Beach too (gaining access via a ramp at Ocean View Avenue in the central downtown commercial core), but State Parks eliminated vehicular access fronting Pismo Beach in 1980.<sup>132</sup> The result is that the City of Pismo Beach now enjoys a classic beachfront – stretching from its downtown to its southern City limit – that is devoid of vehicles and features more typical and low-key beach pursuits. Pismo Beach has a population that is approximately

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<sup>130</sup> See July 17, 2018 letter from San Luis Obispo County Counsel Rita Neal to State Parks on this point.

<sup>131</sup> San Luis Obispo County Public Safety Services and the Oceano Dunes, San Luis Obispo Grand Jury, 2019.

<sup>132</sup> And thus eliminating such vehicular use from the areas between Ocean View Avenue in Pismo Beach to West Grand Avenue in Grover Beach downcoast, where West Grand Avenue now forms the northern limit of allowed vehicular activity.

84% non-Hispanic white with a federal poverty rate of 8.4%.<sup>133</sup> It is also located upwind from the Park, and thus does not suffer from the dust plume that carries particulates to downwind communities. Partly for these reasons, Pismo Beach enjoys a bustling beachfront commercial district, and a robust tourism economy with over 65 restaurants and 30 hotels, motels and other overnight accommodation facilities. In other words, Pismo Beach has been able to capitalize on its beachfront location for traditional beachgoing activities and associated economic development.

#### Sea Level Rise and Community Resiliency

And finally, another potential and impactful consequence of ongoing management activities at the Park is the regular grading of the West Grand and Pier Avenue entrance ramps to maintain vehicle access, increasing climate vulnerability in an underserved community with fewer resources to address the impacts. Because this is an extensive and dynamic dune system, sand is constantly shifting around to build new dunes, which are the community's first line of defense from coastal storms and wave runup and, over the longer term, sea level rise. In order to maintain the entrance ramp, sand must be continuously removed to maintain a wide, flat accessway from the streets to the flatter areas of the beach. In effect, sand removal activities at the Park are preventing the accumulation of sand and the recovery of the protective dunes in the entrance area, leaving the Pier Avenue area of Oceano, and also the West Grand Avenue area of Grover Beach, more vulnerable to storm waves and flooding. The smooth entrance ramp and the low elevation "gap" in the line of dunes can serve to funnel storm surge directly into the town via Pier Avenue (e.g., during King Tides, evidencing potential future problems of the sort associated with sea level rise). According to reports received by the Commission (and referencing State Parks and County Public Works estimates), an additional 40-80 tons of sand deposited on Pier Avenue by the tires of departing vehicles is swept up and stockpiled or transported to the landfill several times a week, steadily diminishing the naturally available sand supply within the system and potentially increasing Oceano's vulnerability to sea level rise.

In addition to the clear effects of the ongoing sand loss and removal, the vehicles themselves may be contributing to coastal hazard vulnerability in more subtle ways. Frequent vehicle travel in the dry sand areas of the upper beach has destroyed incipient dunes at the transition between the beach and foredune. In some cases, it has encroached right up to the toe of the dunes into the foredunes in the areas both north and south of the Pier Avenue entrance. The beaches and dunes function together as a system, and deterioration of the beach and foredunes can spread farther into the dune complex. At best, vehicle use of the back beach alters the natural morphology of backshore, smoothing the incipient and foredune areas that provide the natural topographic transition between the beach and the stable foredunes, and disturbing the upper layers of sand.<sup>134</sup> At worst, the effects of vehicle traffic in this area could

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<sup>133</sup> The overall poverty rate in the state of California is 13.3%, for reference.

<sup>134</sup> And these activities raise questions of whether they are even allowed by Coastal Act Sections 30235 and 30251, and related LCP provisions. Namely, Section 30251 requires that natural landform alteration be minimized, and clearly the activities associated with Park use and operations do not minimize alteration of the natural landform. If anything, the natural landform is being significantly altered by both

obliterate the foredune and increase the susceptibility of the main foredunes to erosion during high wave conditions. South of Pier Avenue these dunes are the primary line of defense for the homes along Strand Way, which have previously been threatened during large storm events (e.g., during the 1982-83 El Niño).

In an era where shrinking beaches are causing other cities to protect communities by importing sand at significant expense, in effect, state and local agencies are exporting tons of sand out of the Oceano Dunes system every year, increasing the vulnerability of an already at risk community with limited resources to pursue other resiliency options, leaving this part of town increasingly vulnerable to rising seas.

### ***Recreational Equity***

The Commission recognizes that a core component of its EJ Policy and of the Coastal Act more broadly is to maximize public recreational access consistent with coastal resource protection to and along the shoreline for everyone. These issues are central in guiding the Commission's implementation of the Coastal Act, and by extension the LCPs. But when access interests conflict with one another, or the type and intensity of public recreational use is leading to adverse outcomes, the EJ policy and its accompanying Statement of Environmental Justice Principles provide the Commission with a more focused lens to consider and address these disproportionate impacts to underserved communities.

Here, the Park's impact on these communities is resulting in a number of inequities. While OHV enthusiasts clearly benefit from Park use, their enjoyment comes at the expense of adjacent underserved communities that are forced to bear the brunt of the social and economic problems and environmental degradation resulting from that use. The more affluent adjacent beach communities, meanwhile, have vehicle-free beaches, relatively well-funded city services, and thriving tourist economies that stand to gain some economic benefits from OHV tourists patronizing shops and restaurants.

Some OHV enthusiasts who use the Park are also claiming they will suffer environmental justice harms if their current level of use is curtailed. Many who live in the Central or Imperial Valleys have stated that the Park is their primary point of coastal access, and it provides lower-cost coastal recreation opportunities for their families and friends. For these residents, a summer vacation spent camping at Oceano is a low-cost way to escape the environmental justice burdens of their home regions, including impaired air quality, water quality, pollution and excessive heat. Because of their shared passion for off-roading, they identify strongly as a community and refer to the traditions

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vehicles/OHV and also by supporting activities (e.g., beach/dune grading). Arguably, that is inconsistent with Section 30251 and similar LCP sections. Coastal Act Section 30235 provides an override for certain activities that alter natural shoreline processes, which is typically related to shoreline armoring but can also relate to other things that alter such processes as well, such as the activities at the Park. However, the Section 30235 override only applies when such activities are undertaken to serve coastal-dependent uses, or to protect existing structures or public beaches in danger from erosion; none of which is applicable in terms of Park uses and operations. Thus, the Section 30235 (and related LCP sections) override does not apply here, and the level of natural landform alteration is not allowed by Section 30251 and related LCP sections.

they have developed (in some cases, over generations or decades) as central to their “off-roading culture.” They feel that the survival of this culture hinges on continued vehicular access and camping at the Park.

Their contention raises the central question of how the Commission should weigh competing claims of environmental justice. The answer can be found in Section 30107.3 of the Coastal Act. In enacting that section, the Legislature’s intended goal was to provide for:

*The availability of a healthy environment for all people, [and] 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*

People from all backgrounds enjoy motorized recreation at the Park, including some who come from underserved 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. The benefits of recreation neither justify nor negate the burdens they cause for others. Nor can other inequities experienced by residents from underserved communities further inland be mitigated by the imposition of burdens on another environmental justice community nearer the coast.

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 on these six miles of coastline in the entire state. They raise important recreational equity considerations in terms of ensuring that different user groups have access to finite coastal recreational areas. However, this is premised on the belief that OHV/vehicular use is a benign one when it is not. Public recreational access is not a zero-sum game under the Coastal Act: one person’s recreational access benefit should not result in someone else’s burden. In fact, the Coastal Act includes specific policy requirements to guard against this by ensuring that access is provided in a manner that respects constraints and doesn’t cause or result in adverse impacts to, for example, sensitive habitat and public health. The Coastal Act and corresponding LCPs require that public beach areas are available for all to use and enjoy, but provide appropriate sideboards to make sure that the activities allowed – and allowed to *all* users equally – do not themselves disproportionately and adversely affect adjacent and underserved communities. In other words, recreational equity is an important part of the implementation of the Coastal Act and the LCPs, inherent therein being the idea that certain activities might need to be limited, for all, because the underlying resources can’t accommodate such intensity of use.

And as explained in more detail subsequently in this report, the Park’s future will still be one that allows the motoring public to enjoy low-cost recreation, including beach camping, albeit without OHVs. It will not result in Park closure or prohibit future access to the beach for myriad other activities. The continued provision of street-legal vehicles



and low-cost car camping on the beach between the West Grand and Pier Avenues will still be available for those who use the Park now (and in roughly the same length of shoreline that is most currently used for such beach camping today). They will still be able to enjoy lower-cost and ADA accessible beach vacations and all of the environmental benefits associated with a day or a weekend or a week at the coast. It would also significantly reduce the ongoing burdens to a number of undeserved communities, and open up new access opportunities. Therefore, claims of environmental justice harms accruing to OHV enthusiasts if recreational vehicle use is phased out are misplaced.

#### **D. Conclusion**

Over the years, the Commission has heard from many stakeholders that the vehicular/OHV uses at the Park are contributing to disproportionate impacts on the residents of Oceano, Grover Beach, Nipomo, Guadalupe and Santa Maria, which struggle with issues ranging from air quality to beach access to environmental protection and economic development. These communities bear various burdens of Park activities and operations with little of its benefits. 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. Unlike the more affluent beach communities in South San Luis Obispo County, such as Avila Beach and Pismo Beach, the residents of Oceano have *no* non-motorized beach access options fronting their town, and the downwind, inland, disadvantaged communities under the dust plume endure significant air quality and public health problems. The two communities adjacent to the Park, Oceano and Grover Beach, experience higher traffic, trash and crime. Both have a higher concentration of non-white and low-income residents than other places in the County. This economic and demographic disparity is even greater when compared specifically with other coastal communities. Thus, the data indicates that coastal recreation and public health burdens are being concentrated in communities with a greater proportion of people of color and low-income individuals.

It is clear that these kinds of impacts and inequities need to be reassessed, both in light of the Commission's EJ Policy but also in terms of appropriately addressing historic and generational inequalities that are at least partially the result of Park operations on surrounding areas. This must be done in a manner which is consistent with the protection of coastal resources, as required under the CDP, the Coastal Act, and applicable LCPs. In short, the Park has been operating for many years without adequate consideration of environmental justice concerns. As the future of Park operations is considered, the Commission has an opportunity to remedy this decades-long omission and begin the process of including the voices of these marginalized stakeholders. Through its environmental justice authority, the Commission has the ability to address these kinds of public access, pollution, environmental, social, and economic impacts that have contributed to decades of coastal inequities. And the Commission can do this in a manner also consistent with the protection of coastal resources, as required under the CDP, the Coastal Act, and the LCP.

## 8. Tribal Issues

### A. Background

In addition to these environmental justice concerns, Park operations also affect Native American tribal interests. In this regard, and at its August 2018 meeting, the Coastal Commission adopted its Tribal Consultation Policy<sup>135</sup> to comply with state law and ensure California Native American tribal members are full participants in Commission decisions that affect cultural resources. Tribal and indigenous communities with cultural ties to the coast depend on access to ancestral lands and sacred sites to maintain traditional practices, yet their unique perspectives are frequently overlooked or undervalued. As such, the Commission, through its Tribal Consultation Policy, committed itself to ensure its planning and permitting actions avoided, or minimized and mitigated, tribal cultural resources in full conformance with the Coastal Act, including through meaningful consultation with affected tribes to understand their concerns and recommendations, stating:

*The Commission seeks to establish and maintain a respectful and effective means of communicating and consulting with Tribes and will seek in good faith to:*

- 1. Communicate and consult with Tribes and seek tribal input regarding the identification of potential issues, possible means of addressing those issues, and appropriate actions, if any, to be taken by the Commission.*
- 2. Assess the potential impact of proposed Commission Actions on Tribal Interests and ensure, to the maximum extent feasible, that tribal concerns are considered before such Actions are taken, such that impacts are avoided, minimized, or mitigated in conformity with Coastal Act and other applicable legal requirements.*

The Tribal Consultation Policy found that the coastal resources the Commission is tasked with protecting under the Coastal Act also often are sacred tribal resources, and thus understanding these relationships is key:

*In partnership with coastal cities and counties, the Commission plans and regulates the use of land and water in the coastal zone, in a manner protecting public access and recreation, lower cost visitor accommodations, archaeological and paleontological resources, terrestrial and marine habitat protection, visual resources, landform alteration, agricultural lands, commercial fisheries, and coastal water quality. In many cases, Tribal Cultural Resources will qualify as archeological, paleontological, visual, biological, or other resources that the Commission is tasked with protecting pursuant to the Coastal Act.*

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<sup>135</sup> See the Coastal Commission's Tribal Consultation Policy at <https://documents.coastal.ca.gov/assets/env-justice/tribal-consultation/Adopted-Tribal-Consultation-Policy.pdf>.

## **B. History**

The Park has a long tribal history and is rich in tribal resources. According to the LCP's Oceano Specific Plan:

*The project area lies within the historic territory of the Native American group known as the Chumash. The Chumash occupied the region from San Luis Obispo to Malibu Canyon on the coast, inland as far as the western edge of the San Joaquin Valley, and the four northern Channel Islands (Grant, 1978). The Chumash are subdivided into groups based on six distinct dialects: Barbareño, Ventureño, Purisimeño, Ynezeño, Obispeño, and Island. Obispeño, the northernmost group of Chumashan speaking people, occupied the project region. Archaeological data indicate that stationary populations occupied the coastal regions of California more than 9,000 years ago (Greenwood, 1972). The life of the ancient Chumash followed an annual cycle of ocean and river fishing, fowling, hunting of large and small game, and harvesting of native plant products. Food storage and systematic redistribution were key elements in the success of the culture. Populations consisting of several related families, or larger extended kin groups, lived in permanent villages and towns along the coast, and in interior canyons and valleys. An extensive commerce had flourished since earliest times centering first around the exchange of ritual objects and luxury items and later extending to food and consumer products like beads and ornaments. Over the millennia the Chumash adapted to changes in climate, shifts in plant and animal resources, new technology, and altered social conditions. Society evolved into a stratified and monetized non-agricultural system around 1000 A.D. (King 1990).*

And according to State Parks 1975 General Plan:

*The Pismo Beach area is within the territory of the Indians of the northern Chumash, especially the group known as the Obispeno. The native name for the Obispeno appears to have been Stishini. Place names in the general area include Tishlini, the native name of San Luis Obispo. Pismo and Huasna appear to be derived from Chumash village or area names. Archaeological data for the San Luis Obispo region indicate that the area was occupied by at least 7,000 BC. The terminal archaeological period, Canalino, began about 2,000 to 3,000 years ago and ended with the Spanish Conquest. The specific archaeological resources within Pismo State Beach consist of 14 sites ... The two largest sites, 54,000 square feet and up, may represent village sites ... The discovery of additional archaeological values in the future is a distinct possibility. Those archaeological sites that do not enjoy a preserve status must be protected in other ways. First, they should be posted and fenced, and an active and intensive excavation program should then be undertaken to provide data that will validate their loss should it occur through human and natural erosion. The signs should not highlight the cultural values but should draw attention to the importance of protecting these zones or areas of high environmental value.*

Accordingly, the Commission's base CDP from 1982 requires the protection of cultural resources by placing protective fencing around such resources as they become known, with the goal of protecting them from potential OHV and camping impacts. However, the Commission concedes that this was really a more reactive requirement than a proactive recognition of potential tribal concerns. And further that it is clear that the Commission's Tribal Consultation Policy strongly advocates for the latter. It is not enough to protect resources as they are uncovered (although that is important too), rather it is critical to understand and acknowledge that Native American tribes have a connection to the land that significantly precedes all of the activities that are being evaluated here in this CDP review, and their voices regarding the core use and intensity of use issues being evaluated here must be heard, and heeded.

### **C. Tribal Consultation**

In conformance with the Commission's Tribal Consultation Policy, staff reached out to various Chumash tribes, including the Northern Chumash and Yak Tityu Tityu Northern Chumash. With respect to the Northern Chumash Tribe, they have historically participated in past Commission annual CDP reviews and in past CDP processes, including with respect to dust control. And their position regarding allowed uses and intensities of use at the Park has remained consistent and clear over the years, including as reiterated in relation to this CDP review. Specifically, the use of the beach and natural dune areas for vehicular/OHV uses has long been a concern for the Northern Chumash, who have indicated:

- they were not adequately consulted when the base CDP was approved
- they were not adequately consulted when the LCP was considered and ultimately certified for this area
- they do not support continued vehicular/OHV use at the Park
- they consider the Park to include areas that are sacred ancestral lands that should not, under any circumstance, be used for vehicular/OHV use.

In a recent letter to the Commission,<sup>136</sup> the Northern Chumash Tribal Chairperson stated:

*The State Parks PWP planning draft document lacks California Native American perspectives, indigenous spiritual understandings, indigenous religious comprehensions, and respect for the human beings that have lived on the Dunes for all time, a Chumash cathedral of life. The PWP draft document is the ultimate of disrespect for Chumash Heritage and Culture.*

*The Northern Chumash Tribal Council (NCTC) has spoken to the preservation of the Dunes for over 50 years, asking and pleading for actions that stop the destruction of the Chumash Culture, and Sacred Sites. To no avail. What we*

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<sup>136</sup> From Fred Collins, Northern Chumash Tribal Council Chairperson, dated January 26, 2021.

*have got are: fences around visible Chumash Sites, fences that out-of-towners drive over, thinking is funny to destroy Chumash Sacred Sites, trucks with "Proud Boys" flags driving over our Sacred Sites with no care for the importance of Chumash Culture.*

*Who cares about the Chumash Culture and Sacred Sites? When you read this PWP draft document it concludes that there will be no impact to the Chumash Culture. NCTC finds this to be completely lacking in the truth. The PWP planning document will take you on a "Cookie Cutter" explanation of what drives their evaluations and twisted data and misleading archaeological institutional dominate non-indigenous understandings. In the end compiling the "Cookie Cutter" institutional explanations for the white wash determination of no impacts.*

*This document, a boiler plate determination of archaeologist and institutional dogma, should open everyone's eyes to the white washing of the Chumash Culture. Why don't we all wake up, see that the Chumash lived for over 10,000 years on the sacred Dunes sands, lived, raised children, buried the elders, looked to the heavens of majesty, opened our souls to the Sun rises and Sun sets, as stewards of the care of the diamond great Dunes and landscape of wonder, all points connected, walking, collecting, hunting, fishing, living in the Oneness of All Things.*

*The Chumash today hold no rights of any kind through the dominate society to practice and experience our past, with honor for our ancestors on the Dunes. The Dunes must be honored for all.*

It is clear to the Commission that the Northern Chumash have been heard in the past as it regards the Park, including at past CDP reviews, but that they have not been actively listened to. The Northern Chumash clearly find the Park to be a sacred natural place, and they want the vehicles and OHVs that degrade it to be removed so that sacred natural space can be honored and cherished. And it is equally clear to the Commission that what the Northern Chumash want is what the law actually requires.

Similarly, in conversations with the Yak Tityu Tityu Northern Chumash, they, too, raise significant concerns regarding the incompatible nature between OHV use and tribal resource protection. While tribal members acknowledged the efforts of State Parks staff of ensuring tribal resources are protected, they also made clear that impacts do occur (e.g., tribal human remains have been unearthed in the riding area, riders do sometimes venture past protective fencing surrounding sacred sites, etc.). The entire Park is sacred land where human remains and other sensitive tribal resource may be present. And given the emissivity of the dunes and the inability for vegetation to take root and stabilize them, the dunes are constantly shifting and potentially unearthing tribal resources. Given these factors, the Yak Tityu Tityu similarly indicate the proposed PWP is wholly inadequate in terms of tribal resource protection, and that OHV use should not be allowed at the Park moving forward.

## **D. Conclusion**

It is clear from tribal consultation (as well as past comments received from tribal representatives) that there has been a disconnect between operations at the Park and these tribes. The Commission, too, has not taken action in relation to development at the Park in ways that respect the tribal concerns identified. Rather, to date, the Commission has not prevented all of the things that the tribes adamantly oppose, and have for many years. As with bringing finality to lingering CDP questions for other reasons, the CDP review also provides an opportunity to heed tribal concerns.

In sum, to date these tribes clearly feel as though they have not been consulted on key Park issues affecting their ancestral lands over time, and are not supportive of vehicular/OHV uses that degrade the natural environment. Clearly, as with environmental justice concerns discussed above, there needs to be an enhanced focus on tribal concerns and suggestions. The Park has been operating for many, many years without adequate consideration of tribal concerns, and these concerns need to be clearly and effectively taken into account as the future of Park operations is considered in a manner consistent with coastal resource protection. Based on Commission staff's tribal consultations, it is clear that operations of the Park do not adequately respond to the way in which they affect tribal interests, and these issues represent another fundamental constraint to the continuation of the status quo at the Park. Consideration of tribal concerns points to the need to rethink the types and intensities of allowed uses at the Park. The tribal representatives also speak to the need to curtail vehicular/OHV use. In the end, what these tribes *want* is also what the law actually *requires*, including in terms of ESHA and environmental justice issues, as described in previous sections of this report.

## 9. Planning and Permitting Issues

### **A. CDP 4-82-300, as Amended**

Many of the above described issues and constraints are not new, but rather have been identified as issues requiring resolution since CDP 4-82-300's initial approval in 1982. To date, it has been through that CDP that these issues have been addressed on a temporary basis, albeit never resolved completely. As described previously, the Commission's base CDP authorized certain vehicular/OHV operational and use parameters for the Park temporarily, and that CDP was intended to provide a forum for reaching conclusions regarding the types and levels of use that would be allowed at the Park, including through the annual CDP review process. The CDP's terms and conditions, including as have been modified and amended over the years, set in motion a series of efforts to understand if the Park had an environmentally sustainable "carrying capacity" to be able to accommodate vehicular/OHV use. These included carrying capacity studies, the Technical Review Team (TRT) effort, interim use limits, and other efforts. The CDP also anticipated efforts to address critical elements regarding how to access the Park and how such a decision would ultimately affect where vehicular and OHV uses could and could not occur. Ultimately, these efforts were not successful.

In its PWP, State Parks asserts that the use of street-legal vehicles and OHVs at the Park “have been established as vested rights under the authority of State Parks per PRC 30401 and were codified in Coastal Commission Application 36-17 (General Plan for Pismo State Beach) and CDP 4-82-300, and the County’s LCP includes specific standards intended to allow this recreational activity to continue in a manner that preserves surrounding sensitive dune habitats.” The Commission respectfully disagrees. First, Coastal Act Section 30401 states:

*Except as otherwise specifically provided in this division, enactment of this division does not increase, decrease, duplicate or supersede the authority of any existing state agency.*

*This chapter shall not be construed to limit in any way the regulatory controls over development pursuant to Chapters 7 (commencing with Section 30600) and 8 (commencing with Section 30700), except that the commission shall not set standards or adopt regulations that duplicate regulatory controls established by any existing state*

Section 30401 states that the Commission’s authority is not duplicative of or superior to that of another agency. However, it also explicitly imposes the coastal development permitting requirements of Chapter 7 on other state agencies. State Parks is in effect arguing that it need not obtain a coastal development permit for activities at the Park that are regulated by the Coastal Act because they are activities undertaken by State Parks. This position contradicts the plain language of the second paragraph of Section 30401, as well as the requirement of Section 30402 that all state agencies carry out their duties and responsibilities in conformity with the Coastal Act. Moreover, there is a process by which State Parks could have sought a vested rights determination from the Commission, but it never sought such determination.

Second, with respect to the Commission’s approval of State Parks’ General Development Plan (GDP) in 1975, such approval was explicitly for a conceptual framework for Park management, and was not a coastal permit permanently authorizing any particular type of development, much less the types of development DPR points to. The approval makes clear that “this approval represents conceptual approval of the plan as presented, but does not extend to any of the actual development contemplated pursuant to the plan. Such development shall be the subject of separate permit applications at such time as it is actually undertaken.” The GDP itself didn’t commit to specific outcomes. Rather, it identified interim strategies for access, staging, and carrying capacities while more studies to finalize such outcomes were carried out and the requisite CDPs were processed. Also, that approval pre-dated the Coastal Act, which was not in effect until January 1, 1977. Thus, the Commission’s GDP approval does not mean the Commission permanently authorized all uses and intensities of use at the Park through the GDP under the Coastal Act. Rather, it was the Commission’s action in 1982 that constituted its action under the Coastal Act. More specifically, it circumscribed allowed uses and intensities of use, albeit temporarily. Even if the approval of the GDP meant what Park is arguing it means, and the Commission

disagrees with that premise, that GDP approval would have been superseded and replaced by the 1982 CDP.

In short, while State Parks now asserts that these past Commission actions created a permanent vested right for continued OHV use (i.e., that the question of whether vehicular and OHV uses are allowed in ESHA has already been answered by the Commission by these past actions), this is simply inaccurate. State Parks never availed itself of the process for establishing a vested right. Moreover, even after the Commission's 1975 action on the GDP, State Parks nevertheless applied for the development that was ultimately authorized in the 1982 CDP, something it need not have done had these uses already been vested.

State Parks and others also take the position that the fact that the base CDP allows current uses and intensities of use at the Park means that the Commission cannot now evaluate whether that decision should be changed. This assertion rests on the assumption that State Parks has 'vested' the CDP and thus has a right to continue current levels of use under it.<sup>137</sup> Thus, if State Parks has vested the use limits, that

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<sup>137</sup> Some have also argued that State Parks has a vested right to continue to allow vehicular/OHV use at the Park, regardless of the CDP and this CDP review, because that development preceded the coastal permitting requirements of Proposition 20 (1972's "Coastal Initiative", wherein CDPs were first required for development within 1,000 yards of the shoreline starting on February 1, 1973) and 1976's Coastal Act (with its permitting requirements throughout the coastal zone commencing on January 1, 1976). Though similar terms are used, claims of this sort of vested rights represent a different argument than suggesting that the CDP itself is what 'vests' that development.

For vested rights, the Coastal Act lays out a process by which a party can claim that it has a vested right to continue a development activity without the need for a CDP if they can prove that they had already legally commenced that development activity prior to the commencement of CDP requirements (see Coastal Act Section 30608). The criteria for establishing such a vested right for an ongoing activity is to be able to conclusively show that (1) the activity in question has been occurring regularly since prior to February 1, 1973 (for within 1,000 feet of the ocean) and prior to January, 1, 1977 (throughout the coastal zone); (2) that the applicant had all necessary authorizations to do so as of those time frames; and (3) that the applicant has made a substantial investment and incurred substantial liabilities in reasonable reliance on a good faith belief that they would be able to continue these activities. Vested rights determinations require an application, and, pursuant to Section 13200 of the Commission's regulations, the burden of proof is on an applicant to prove these things (i.e., and not on the Commission to disprove them), which means that if not proven, the application is denied. Vested rights determinations these days are fairly rare, including as the main intent was really to address activities that just preceded CDP requirements.

Here, State Parks has never submitted such an application, and rather has instead availed itself of the CDP process for authorizing development at the Park (i.e., the base CDP). Once it availed itself of the CDP process, State Parks waived its right to assert a vested right to vehicular/OHV use at the Park (see *LT-WR, LLC v California Coastal Commission* (2007) 152 Cal.App.4th 770, 785 (Where the developer fails to seek such a [vested rights] determination but instead elects to apply only for a permit, he cannot later assert the existence of a vested right to development, i.e., the developer waives his right to claim that a vested right exists.)). And even if it weren't so waived, it is not clear that State Parks could prove the above-required elements, including because State Parks did not own the current riding area and SVRA lands until 1974 (*after* initial CDP requirements), and hasn't invested in the Park as a commercial enterprise, meaning modifications now wouldn't mean that it would lose some investment that it detrimentally relied on being able to recoup.



provides the baseline for the Commission's CDP review. The argument is premised on the view that the Commission cannot evaluate these uses and intensities of use now, and their consistency with the Coastal Act and the LCPs, because they have already been permitted and that action cannot be undone. The Commission respectfully disagrees with this argument.

Although the Commission's base CDP permitted vehicular and OHV use at the Park through the 1982 CDP, the CDP's conditions demonstrate that such use and intensity of use was not permitted for all time. On the contrary, and as described in the background section of this report, the base CDP allowed these uses and intensities of use on a *temporary* basis that was, and is, subject to periodic re-review to allow for adjustments in light of evaluation of impacts and use/intensity of use appropriateness moving forward, such as through this CDP review. In fact, the purpose of the annual review process, including this review, is to allow the Commission the opportunity to assess whether to renew the temporary authorization for another year. If the Commission is satisfied at the annual review that coastal resources are being protected, as required by the Coastal Act and the LCPs, then the permit remains authorized for another year. Conversely, if the Commission is not satisfied, then the temporary authorization is *not* renewed.<sup>138</sup> The base CDP requires annual analysis of uses and intensities of use at the Park, none of which were permanently authorized. Thus, the base CDP does not establish ongoing authorization for vehicular/OHV use under the Coastal Act and the LCPs here.

The Commission's re-review is particularly important now, due to State Parks' efforts to develop a PWP for operation of the Park. PWPs are required to be consistent with the Coastal Act and LCPs, so by comprehensively reviewing the uses and intensities of uses at the Park for LCP and Coastal Act consistency, the Commission can provide guidance to State Parks on the development of its PWP. Thus, now is the appropriate time for the Commission to fully evaluate the uses and intensities of use at the Park for their consistency with the LCPs and Coastal Act and to, in effect, finalize decisions

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<sup>138</sup> On this point it is noted that there have been multiple annual reviews where the Commission was not satisfied with the review, and determined that there were coastal resource problems that weren't being properly addressed, most recently (and perhaps most forcefully) in July 2019. As a result, arguments have been made by some that the uses and intensities of use at the Park were no longer allowed after such reviews as a result (and are not allowed now since the July 2019 review) inasmuch as the temporary authorization was not renewed. This is a valid reading of the base CDP annual review requirement. At the same time, the Commission in July 2019 affirmatively allowed State Parks another year (and ultimately extending to this hearing in March 2021) to address Commission concerns. As a result, it is best understood that the Commission gave a temporary reprieve (and by extension a temporary renewal of the already temporary authorization) to State Parks in 2019, but that that temporary reprieve only extends to this March 2021 review. And further, per the applicable CDP condition, the Commission here is in the position to require "an alternative approach to resource management, or set of management measures...through this review process." In other words, this is one of the reasons that the Commission is in the position it is with respect to the CDP annual review, including with respect to its action in March 2021.

regarding allowable uses and intensities of use consistent with the law on a permanent basis.

As discussed herein, it has become clear over the past several decades, particularly as the science around vehicular and OHV use in dunes has developed, that the temporary authorizations in the base CDP have not adequately addressed the resource degradation issues at the Park to date. Ultimately, even today, almost 40 years later, the Park is operating under *interim* and only *temporarily authorized* access and staging area locations and maximum use limits, and the Commission has not yet comprehensively evaluated such uses for permanent authorization under LCP and Coastal Act. The constraints associated with vehicular and OHV uses in ESHA, as well as the EJ impacts of such uses, were discussed previously. This section focuses on other issues raised by the temporary CDP authorizations.

## **B. Park Entrances**

Even if vehicular and OHV uses were allowed in ESHA, the CDP requires that the entrances into the Park be designed in such a way as to limit their impacts on coastal resources and community character. Toward this end, CDP 4-82-300, as amended, identifies the current Park entrance and staging system as interim, and subject to further review and study to designate this system (or alternatives to it) as final through the CDP and the LCP. To date, the Commission has not yet reviewed and approved final entrance and staging area locations and provisions. Thus, State Parks is out of compliance with the CDP for this reason (see also violation finding below). As described above, the conditions of the CDP require DPR to prepare an environmental impact analysis adequate to enable the selection of a final entrance/staging area system determined to be the least environmentally damaging; require that that final system be incorporated into the LUP; require that that final LCP-certified system be constructed within three years of LUP certification (i.e., by the late 1980s); and require the permit to be subject to review and modification by the Commission if the final system is not constructed by that deadline, which it was not (see CDP conditions in Exhibit 3).

While it did not limit the number of sites that could be studied, the CDP identifies at least four sites that State Parks was required to analyze: the Calendar Road area; the stables/agricultural lands area south of Arroyo Grande Creek; agricultural lands north of Oso Flaco Creek adjacent to the Phillips 66 (previously Union Oil) property; and the current interim accessways at West Grand and Pier Avenues. The first three locations are all near the southern part of the Park, where the current main riding areas are, and the others are the existing accessways.

In addition to requiring that the final selected access and staging system be the least environmentally damaging, the base CDP requires that the selected access and staging system reduce OHV-related impacts to the residential character of the community of Oceano, that it facilitate the successful separation and regulation of recreational uses within the Park, and that it be able to be developed expeditiously. Because the location of any identified final staging areas would necessarily affect the way in which they are accessed via entrances to the Park, the CDP designates the two existing entrance

locations at West Grand Avenue and Pier Avenue as temporary. Thus, the CDP requires that DPR evaluate and present options for a *final* Park entrance and staging system for Commission consideration. Despite this being required over three decades ago, State Parks has not submitted, and the Commission has never acted upon, any proposed final entrance and staging system.

The Park entrance question is critical because the route by which vehicles access the Park, including to get to camping and riding areas, is a long-standing issue that has significant implications on coastal resource protection and access management. It is also a major public access issue for the residents of the adjacent community of Oceano, many of whom complain that the entrances turn the eight miles of community-fronting beaches into a highway, and preclude other more typical beach uses, like picnicking, lounging/playing on the sand, walking, swimming, surfing, and skimboarding. Currently, street legal vehicles, with or without OHVs in tow, access the beach from either West Grand Avenue in Grover Beach or Pier Avenue in Oceano. Vehicles then traverse the beach in a southerly direction to access the riding area. This involves driving along a stretch of shoreline used by pedestrians and general beachgoers, including local residents and visitors to the area. This mix of vehicles, pedestrians, and other beachgoers leads to fundamental user incompatibilities, and has resulted in user conflicts and public safety issues.

In addition, when it is flowing, vehicles heading to the camping and OHV riding areas must also drive through the mouth of Arroyo Grande Creek, which provides habitat for ESA-threatened Steelhead trout and ESA-endangered Tidewater goby. Typically, the only time the Creek has significant flows is during the rainy season, and it otherwise terminates in a lagoon inland of the immediate shoreline. However, when it is flowing, the Creek presents an obstacle to vehicular travel, including to get to the OHV riding and staging areas. The creek has been the site of problems as vehicles attempt to navigate through and across the creek to access the riding areas further south. Vehicles have sometimes been swept into the ocean, and these activities cause coastal resource degradation, as described previously in this report. OHVs are currently off-loaded from street legal vehicles at the interim staging area, which is located south of Arroyo Grande Creek, and thus it is the street legal vehicles and trailers that make this creek crossing, not OHVs.

The current entrances are at the most northern portion of the Park (with the West Grand Avenue entrance forming the northern boundary). The main riding and camping areas are to the south, requiring all vehicular users, even if they only want to be in the southern part of the Park for OHV use and camping, to navigate their vehicles along several miles of sandy beach to get there. Because of the obvious conflicts this presents between more typical beach recreational uses and vehicular/OHV use, particularly in the northern part of the Park, as well as the issue of vehicles crossing Arroyo Grande Creek, this system has never been ideal. And that is the primary impetus of the Commission only temporarily approving these Park entrances on an interim basis in 1982, and requiring that State Parks provide data to help the Commission determine

what made the most sense for permanent Park access, in order to best protect resources.

State Parks has studied the access and staging area issue. Specifically, DPR released an Environmental Impact Report (EIR) in 1991 designed to identify the least environmentally damaging staging area and entrance points. That 1991 EIR evaluated the potential impacts associated with five alternative access corridors: West Grand Avenue, Pier Avenue, Calendar Road, Railroad Avenue, and Silver Spur Place. Ultimately, the EIR determined that the West Grand Avenue and Pier Avenue entrances were the least environmentally damaging and that they should be designated permanent. DPR amended their General Development Plan in 1994 to state as much. However, as part of the process to establish them as final entrance locations through the CDP, Special Condition 1(b) requires DPR to update the State Parks General Development Plan *and* for the LCP to be amended. While DPR states that it updated the State Park General Development Plan to reflect the West Grand and Pier Avenue accesses as permanent, DPR never applied to San Luis Obispo County for the requisite LCP amendment, nor to the Commission for a CDP amendment to update and reflect the final entrance selection. It is through the required LCP and CDP amendments that the Commission would have had the opportunity to evaluate which alternative Park entrances could be found consistent with the LCPs and Coastal Act, including taking into account DPR's prior environmental analysis on the issue.

In 2006, DPR completed a second alternative access study. This 2006 study evaluated eight potential accessways: West Grand Avenue, Pier Avenue, Ocean Street, Creek Road, Silver Spur Place, Phillips 66, Little Oso Flaco Lake, and Oso Flaco Lake. Ultimately, DPR's study again identified continued use of West Grand Avenue and Pier Avenue as the environmentally preferred alternatives. The study was presented to the TRT for discussion, but the TRT never formally reviewed the document nor made any recommendations on the study.<sup>139</sup> Although DPR went through the process of completing the access study, DPR never pursued amendments to the CDP or LCP to finalize the interim nature of the staging area and West Grand Avenue/Pier Avenue entrance access points. Thus, all entrance and staging areas remain classified as interim under the CDP, and the conditions of the CDP remain unfulfilled.

State Parks has consistently argued that the two previous studies, particularly the latest study from 2006, have provided the appropriate analysis and conclusions regarding the proper final access and staging locations, and that it considers this issue resolved.<sup>140</sup>

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<sup>139</sup> The TRT identified its intention to review the results of the 2006 study as a research priority in 2007 and continued discussion of the issue as a research and management issue in 2008 and 2009. However, neither the TRT nor the TRT's Scientific Subcommittee has ever formally reviewed or commented on the study. Since the 2010 annual TRT report, the TRT has not taken any action to resolve the interim status of the entrance access and staging areas, and the issue has no longer been a topic of TRT discussion.

<sup>140</sup> And indeed, State Parks' draft PWP again proposes to use the West Grand and Pier Avenue entrances as the permanent entrances to the Park, and proposes to add two southern accessways, one from near the Phillips 66 site and another from the Oso Flaco Lake area (see also PWP discussion that follows).

DPR further indicates that, but for some minor updates regarding sensitive species habitat considerations, no additional study is necessary, including because there have been no capital improvements or significant changes made in the Park since the studies were last prepared. Thus, DPR indicates that new studies would not provide any additional relevant information not already known.

However, while the reports are substantial, the most recent is 15 years old (and the original 30 years old), they do not take into account more recent changes in context as well as new and emerging coastal resource issues that affect the access and staging locations. These issues and constraints include those discussed in this report, including dust control/air quality issues, environmental justice concerns regarding Oceano beach use, tribal concerns, and the overarching issue that these uses are not actually allowed in the vast majority of the Park under the Coastal Act and LCPs. Regardless of the ages of these studies, State Parks has not fulfilled the CDP requirement to work with the County to submit an LCP amendment to the Commission for action. At the LCP amendment review stage, the Commission would evaluate the sufficiency of State Parks' studies in order to finalize the staging and entrance points, as expressly required by CDP 4-82-300 Special Condition 1(b) (again, see **Exhibit 4**). Therefore, the staging and entrance designations are not final, and State Parks continues to be out of compliance with this CDP requirement.

If State Parks were to fulfill this permitting requirement, the Commission would have to evaluate the impacts of vehicles crossing through and otherwise adversely impacting Arroyo Grande Creek and its listed species, and vehicular use of six miles of public beaches to the detriment of more typical beach access and recreation uses and habitat, including USFWS-designated critical habitat for western snowy plover. These are all serious unresolved issues that require resolution via final decisions regarding allowable Park uses and intensities of use. Evidence available today demonstrates that the existing entrances, and related staging system, result in significant disruption of ESHA and degrades coastal resources. More broadly, the fact that the CDP identifies Park entrance access and staging as interim and subject to further study only leads to a lack of certainty and clarity for State Parks, the Commission, the County, and other interested agencies and parties with respect to Park operations. In addition, the fact that this issue was intended to be resolved decades ago and remains unresolved only serves to fuel debates amongst competing interests about what *should* be designated as the final Park entrance and staging locations.

Ultimately, the above discussion points to the need for finality regarding the Park entrance question, whether vehicular uses were to be allowed or not. And if OHV uses were to be allowed, notwithstanding their Coastal Act and LCP inconsistencies, the current entrance system that provides access in the far north of the Park, when all of the OHV riding and camping areas are in the southern part of the park, makes little resource sense. Indeed, the only way that OHV use should be accommodated, if such uses were consistent with the LCPs and Coastal Act, is through a Park entrance further south, and specifically near Highway 1 and the Philips 66 site. The contemplated entrance near Oso Flaco Lake would not be appropriate for a Park entrance, as that

area is currently limited to passive recreational uses.<sup>141</sup> A Park entrance in the southern portion of the Park, however, provides its own challenges, not the least of which being that State Parks does not own the land between the Park and Highway 1. And, even if it did, such an entrance would be to the back dunes where street legal vehicles would not be able to navigate to the fore dunes and/or the beach absent development of both some type of crossing structure (i.e., tunnel or bridge) for the Union Pacific railroad corridor and some type of vehicular road through some rolling dune ESHA where it isn't allowed.

### **C. Park Carrying Capacity**

Another issue that was meant to be resolved under the CDP back in the 1980s but never has been is the question of the carrying capacity of the Park to provide for uses and intensities of use that do not degrade the underlying resources. To date, some have argued that the carrying capacity of the Park for vehicles/OHV is zero, and others that it has not even been reached now and that vehicular/OHV use should actually be expanded.<sup>142</sup> For the Commission, the question has always been whether and what amount of use can be accommodated at the Park consistent with required coastal resource protection. And, like the Park entrance question, the Commission only acquiesced to a certain amount of vehicular/OHV use on a temporary basis, so that these larger issues could be evaluated, and thus the current level of allowed use is just that: temporary. From the time of the original CDP decision to now, the Commission and State Parks have discussed numerous ways to help define an allowable carrying capacity, but to date, it has not been identified.<sup>143</sup> All use limits are actually based on anecdotal observations of the level of uses that had been occurring.

Under the CDP, the original vehicular/OHV use limits were set at 500 camping units, with day-use and OHV limits to be determined subsequently. As modified since then the use limits allow up to 2,580 street-legal vehicles per day, up to 1,000 camping street-legal vehicles per day, and up to 1,720 OHVs at any given time,<sup>144</sup> where the street-legal vehicle and OHV standards are allowed to be exceeded on Memorial Day, Fourth of July, Labor Day, and Thanksgiving weekends and holidays (see Special Condition 3

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<sup>141</sup> In fact, the Commission required a previous vehicular/OHV entrance in the Oso Flaco Lake area to be abandoned through its 1991 action in the fourth amendment to CDP 4-82-300, and any changes to undermine that action would not be appropriate (including being inconsistent with the requirement that subsequent changes to a CDP not weaken it (see CCR Section 13166(a)).

<sup>142</sup> Including State Parks in its recently released draft PWP that proposes significant expansion of OHV uses into dune ESHA areas (see also PWP discussion that follows).

<sup>143</sup> And still hasn't. In fact, State Parks even acknowledges as much in its draft PWP where it identifies different interim use limits for the Park, and commits to yet another run at producing a carrying capacity study.

<sup>144</sup> In any case, State Parks estimates that on average only 25% of the street-legal vehicle limit, 10% of the OHV limit, and 45% of the camping limit are reached during other than holidays and summer weekends.

of 2001's fifth amendment on pages 34 and 35 of **Exhibit 4**).<sup>145</sup> The CDP continues to identify these numbers as interim, and through a 2001 amendment created the TRT and directed it to research and develop evidence that would support these numbers or some modified level and area of use at the Park (see CDP 4-82-300-A5, Special Conditions 4 and 5, on pages 35-37 of **Exhibit 4**).<sup>146</sup> In other words, both the original CDP and the amendment that authorized the current interim vehicle use limits set these numbers based on historic use patterns represented by DPR rather than rigorous scientific rationale. Development of actual use limits that did have scientific rationale was to be the primary role of the TRT. *The TRT never did this*, and thus the use limits have remained the same since 2001 – nearly two decades ago, without scientific rationale or basis. This represents a significant unresolved Park management issue under the CDP.

These interim use limits were never anticipated to establish the ultimate carrying capacity for the Park. And in 2001, Special Condition 4(a) specified a primary function of the TRT is to “develop recommendations to the Superintendent of the ODSVRA regarding...adjustments to day and overnight use limits...” and, as part of its ongoing research and monitoring efforts, Special Condition 5(d) states: “conduct a comprehensive, long-term monitoring and comparative analysis of the resources impacts associated with varying levels of use, including the highest (peak-use) attendance periods.” Essentially, the condition's interim vehicle use limits were structured as starting points from which the TRT was supposed to recommend adjustments over time based on what was learned through their ongoing research.

The CDP anticipated that the TRT would be continually monitoring vehicle use numbers and their corresponding impacts on Park coastal resources, and would then recommend scientifically based limits to be adopted through amendment of the CDP. However, that never happened, these additional studies have not been conducted, the TRT has not made progress on this key issue, and the TRT does not currently consider use limit monitoring as a primary research or monitoring focus. In short, the TRT experiment has not resulted in the evidence-based change that the Commission envisioned it would in 2001, and it has outlived its usefulness in that regard.

In addition to the limits having never been modified in light of coastal resource constraints, there remain additional unaddressed issues related to how to accurately count and enforce said use limits.<sup>147</sup> Special Condition 3(c) limits the number of OHVs to 1,720 “at any given time.” There are several practical difficulties involved with both accurately counting OHVs entering the Park and accurately tallying how many OHVs remain at any given time. First, DPR does not keep a tally of the number of vehicles leaving the Park. As a result, they currently do not know how many vehicles may be

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<sup>145</sup> Although the base CDP technically allows for such exceedances, in practice State Parks indicates that it does not allow for such exceedances.

<sup>146</sup> The creation of the TRT and the 2001 CDP changes were precipitated by the Commission's frustration in prior CDP reviews that the necessary studies to demonstrate carrying capacity were never undertaken by State Parks, and that the allowed limits were leading to resource degradation.

<sup>147</sup> As well as the ability to enforce other things like speed limits.

present at any one time. Second, the entrance kiosks close at night but users can still access and leave the Park at these times, and thus Parks staff is not present to tally the number of vehicles and OHVs that come in or out. And third, DPR does not verify how many OHVs are brought in via closed trailer where the number of OHVs cannot be identified from the outside, instead relying on the driver of the vehicle to tell them how many OHVs are being trailered in. All of these factors contribute to a lack of counting precision, and thus it is not clear that the current system can effectively provide accuracy in use counts and thus does not ensure OHV operational management is complying with the requirements of the CDP.

In short, even if vehicular/OHV use were allowable at all under the Coastal Act and LCPs here, which it is not, use limits have always been interim, and they have never been modified in light of coastal resource constraints, as has been required for nearly four decades. Clearly, for the myriad reasons described in this report, it would appear that the current amount of use oversubscribes the Park and is leading to significant coastal resource impacts. Perhaps more critically, it is clear that there is no legal carrying capacity for vehicular/OHV uses in ESHA at the Park, given the Coastal Act and LCP prohibitions against vehicular and OHV use in ESHA. Further, the TRT's function in evaluating and modifying use limits has simply failed as a mechanism to regulate these limits in consideration of their impacts to coastal resources. Ultimately, if vehicular/OHV use were to be legally allowable at the Park, which it cannot, as described above, the amount of such use would need to be much more carefully circumscribed, particularly in light of the overlapping range of impacts caused by such uses (i.e., associated with ESHA degradation, air quality and public health problems, environmental and tribal justice issues, etc.).

On this point, State Parks proposes in its draft PWP to reduce maximum daily use limits, where the draft PWP proposes to reduce these limits from the CDP's current daily limits (camping would be reduced from 1,000 to 500 units, OHVs reduced from 1,720 to 1,000 OHVs, and street-legal vehicles from 2,580 to 1,000 vehicles). Although the data on use limits is not precise, it appears that current temporarily-allowed use limits are rarely reached. As indicated, State Parks estimates that on average only 25% of the street-legal vehicle limit, 10% of the OHV limit, and 45% of the camping limit are reached during other than holidays and summer weekends. In addition, OHV and camping area has shrunk by some 175 acres since 2017 as a result of State Parks' dust control efforts in order to allow the dunes to heal and thus to reduce dust. Thus, the proposed lower maximum limits proposed by State Parks in its PWP appear to more closely comport to actual current usage levels, rather than reducing such use levels, and these current use levels are leading to the types of coastal resource degradation identified by the Commission in 2019. These lower limits are also a function of the reduced space within which to allow vehicles due to State Parks dust control efforts. Thus, although the PWP proposes a reduction in overall Park allowed maximum intensity, this reduction appears to actually mirror the current level of use intensity, including as the area available to such uses has also correspondingly shrunk, rather than reduce it. Further, State Parks indicates that it intends to pursue another carry capacity study for the Park, and the PWP identifies that these limits are subject to



change after that study is complete, but there is no provision in the PWP for the Commission to weigh in on any such changes to ensure their consistency with the LCPs and Coastal Act.

#### **D. Park Special Events**

In addition, special events at the Park raise similar use and carrying capacity concerns, particularly considering that special events do not appear to be contemplated within any of the historically-applied interim use limits.<sup>148</sup> For example, “Huckfest” is an event that has taken place informally within the Park for over ten years, and has recently grown in size and formality. The event is an exhibition of vehicles jumping (or “hucking”) off of sand dunes (see photos in **Exhibit 3**). Prior events have included a vendor area, event stage, and a ramp for a motorcycle exhibition. Ticket prices for Park entrance were also increased for the Huckfest weekend to \$35 for day use and \$100 for camping. This is a significant departure from the typical \$5 day use fee and \$10 camping fee.

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

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

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<sup>148</sup> It is worth noting that the CDP does not specify any particular use or other limits specific to special events, rather special events must be undertaken consistent with the generally applicable interim use limits designated in the CDP, and with CDP requirements more generally. In other words, if not covered by the base CDP (and special events as a rule are not so covered), then such special events require their own CDP.

anticipated impacts to coastal resources.<sup>149</sup> Thus, other special events, including music festivals, raise similar concerns, including in terms of the ability of State Parks to appropriately manage the area for public safety and natural resource management and their compatibility in this beach and dune resource area more broadly.

### **E. Violations**

As discussed above, DPR is not in compliance with numerous terms and conditions of its coastal development permit (CDP 4-82-300 as amended). Special Condition 1(b) of CDP 4-82-300 designates the current OHV staging area as interim and requires a final staging area to be designated through amendment of the San Luis Obispo County LUP and CDP within 18 months of effective certification of the LUP (i.e., by October 12, 1985). Special Condition 1(b) also requires construction of the designated final staging area within three years of LUP certification (i.e., by April 12, 1987). Special Condition 2 designates the two entrances at West Grand Avenue and Pier Avenue to be interim and used only until either a final staging area is operational or until the CDP and the LUP are amended to permanently designate their locations. All of the deadlines for compliance with these conditions have long since passed and DPR has failed to designate and operate a permanent entrance and staging system as required. This represents a three and a half decade old violation of the CDP.<sup>150</sup>

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

Other allegations have also been made regarding disallowed vehicle (and other) activity within vegetated dune areas inconsistent with CDP requirements that all dune vegetation be fenced off and protected.<sup>151</sup> As with exceedance of use limits, these allegations have been difficult to verify. For one thing, some are anecdotal observations without supporting documentation. In other cases, photos of dune plants being trampled have been provided, but it is unclear when and where such activities occurred within the almost two square-mile riding area. In other cases, photos of special events have shown trampling of dune vegetation, but were received after the event was over.<sup>152</sup> The dynamic nature of the dunes and the spatial extent, and sometimes transitory nature, of dune vegetation in general make following up on such allegations difficult, particularly

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<sup>149</sup> The music festival was ultimately cancelled, but the event sponsor has indicated an interest in pursuing a future event.

<sup>150</sup> See Violation File No. V-3-17-0001.

<sup>151</sup> See Violation File No. V-3-10-024.

<sup>152</sup> Although Commission staff has in such cases identified the issue to DPR, and asked that changes be made in future events, staff has not to date pursued formal enforcement cases.

when the vegetation in question is a single plant in the riding area, as has been the case in some allegations.

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

In addition, there have been a series of violation allegations over the years related to activities near the two interim accessways in addition to their status, including allegations that the ramps to the beach have been inappropriately augmented, and that signs limiting vehicular use areas have been inappropriately moved to allow vehicular use where it is not allowed under the CDP.<sup>153</sup> And there have been many reports (both with and without photos) of vehicles driving through Arroyo Grande Creek, leading to habitat impacts, as well as vehicle impacts in the riding area itself (with respect to impacts to both sensitive bird species and marine mammals). Again, these types of allegations have been difficult to follow-up on after the fact, and Commission staff has not taken formal enforcement actions to address them to date (except as detailed below), in part because other regulatory agencies also have jurisdiction (e.g., USFWS and CDFW with respect to snowy plover and California least tern) have been involved.

Given the CDP's interim nature and outdated terms and conditions (i.e., originally written in 1982 and not modified since 2001), there is a lack of clarity regarding what it explicitly does and does not authorize, including not being responsive to today's changing coastal resource planning landscape. For example, some of the measures that have evolved over the years and that DPR now employs in conjunction with USFWS and CDFW are actually not explicitly authorized (e.g., fencing related to individual plover and tern nests and to the 300-acre seasonal enclosure). Neither is the use of heavy machinery and grading used to maintain such fencing, to maintain the utility of the vehicular entrance ramps, or to conduct beach grooming operations. This lack of clarity has resulted in numerous complaints over the years, including from community members who question the need and appropriateness of sand removal activities in light of sea level rise and who object to the ongoing resource damage associated with manipulation of the beach and dune environment.

These issues were on clear display in July 2020, when Commission staff received numerous complaints regarding beach grooming/grading and the manipulation of plovers (e.g., actively herding plovers venturing outside the designated seasonal habitat enclosure back into the enclosure, and "scuffing" depressions in the sand and installing

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<sup>153</sup> See Violation Files Nos. V-3-98-004 and V-3-10-042.

mylar flagging to deter plover nesting outside the enclosure). None of these activities was expressly allowed under the CDP. While State Parks staff discussed some of these measures with USFWS and CDFW, they involved development, as defined in the Coastal Act, and required CDP authorization under the Coastal Act. To address these issues, including to cease plover deterrent activities and to provide interim authorization for beneficial plover and tern management measures (e.g., protective fencing around plover nests), the Commission and State Parks reached an agreement on a Consent Executive Director Cease and Desist Order (EDCDO) ED-20-CD-01, with a 90-day duration. The EDCDO shined a light on the existing CDP's inadequacy in regulating and managing the Park's sensitive natural resources and in providing guidance to all parties regarding what was authorized and permissible under the Coastal Act/LCPs. And while it provided State Parks with temporary authorization to undertake important habitat management protocols, it demonstrated a clear need for permanent tools to address these important coastal resource issues going forward.

## **F. Conclusion**

It is clear the CDP needs a revamping in order to address the complicated and important coastal management issues at the Park that have been unresolved for the past 40 years. It is also important to note that, fundamentally, all of the other issues and constraints discussed previously are also all CDP 4-82-300 compliance issues, including as they relate to these core questions of sustainable use under the CDP in light of coastal resource considerations (e.g., issues associated with LCP compliance, Coastal Act compliance, dune/ESHA degradation and its impacts (including on air quality and public health), County ownership of a third of the OHV riding area in the Park, California Native American tribal concerns regarding ancestral lands and sacred sites, and environmental justice concerns related to the effect of Park operations on the surrounding area, including the community of Oceano). That is not to say that each of these are not issues on their own and that these issues do not independently require resolution for other reasons, but rather it is to acknowledge that the Commission's base CDP remains the fundamental Coastal Act regulatory instrument that governs current operations, as well as any next steps at the Park.

State Parks envisions that its PWP would replace the base CDP for ensuring LCP and Coastal Act consistency at the Park. The base CDP would need to be amended, however, for that to be the case, if the Commission were to certify a PWP for the Park. As such, the CDP enables the Commission to require changes to Park operations and management provisions to address these interconnected coastal resource issues.

The above sections of this report have identified a series of overlapping coastal resource impacts caused by activities at the Park, none of which the CDP is adequately addressing, and change is needed. State Parks, too, recognizes that change is needed, and thus it embarked on its PWP and an HCP, drafts of which were recently completed (see Appendix A). Separately, some community groups have independently identified some of the changes they want to see, as have some in the OHV community. There are also some in the 'all or none' camps on either end of the vehicular/OHV use spectrum, where it is either zero vehicles/OHV or 100% vehicles/OHV. Not surprisingly, there are

disparate viewpoints on what this State Park should be. However, there appears to be some consensus that now is the time to fully assess the types of uses and intensities of uses that can be allowed at the Park under the Coastal Act. It is that question above all that provides the framework and foundation for this CDP review, within which the Commission is required to apply the Coastal Act and LCP provisions described earlier.

Thus, the next sections describe State Parks' draft PWP, as well as several other proposals of which the Commission is aware, as these are all a series of potential alternatives to be considered as potential solutions to the series of coastal resource and legal issues described above. Ultimately, the Commission finds that none of these alternatives appropriately addresses the coastal resource requirements of the Coastal Act and the LCPs, due primarily to the basic incompatibility of vehicular and OHV use with protection of ESHA, as required by the LCPs and Coastal Act. The Commission instead identifies required CDP changes – both in the short and the longer term – that ensure Coastal Act and LCP consistency.

## 10. State Parks' PWP

### A. Background

State Parks has recognized the need to address these longstanding problems, as well as the limitations of the CDP in doing so. However, in lieu of making operational and management changes via the process articulated in CDP 4-82-300, during the January 2017 annual CDP review hearing, State Parks proposed instead to pursue a Public Works Plan (PWP)<sup>154</sup> as the vehicle to address longstanding Coastal Act, LCP, and CDP issues, and as a means of taking a fresh look at Park uses, management and configuration, including reimagining it to best meet today's regulatory requirements and address each of the issues discussed above. Indeed, as stated in State Parks' prepared public document *PWP Project Concepts Public Meeting Information Packet* from February 2019, two primary stated PWP goals are to "Obtain and Manage for Coastal Act Compliance within the Oceano District" and "Manage the Park Consistent with State and Federal Resource Protection Goals and Mandates and Other Applicable Plans."

Ultimately, preliminary PWP documents raised concerns about whether it was being undertaken in an approvable manner protective of coastal resources.<sup>155</sup> And, as

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<sup>154</sup> Pursuant to the Coastal Act, public agencies performing public works have the option of preparing a PWP as an alternative to project by project CDP applications and analyses (per Section 30605). If a PWP is certified by the Commission, development can proceed without CDPs pursuant to the certified PWP through a process where the public agency notifies the Commission of the development, and the Commission verifies that it is consistent with the certified PWP (and if it is determined that it isn't consistent, then it is not covered by the PWP). Although PWPs are typically oriented around future specific projects, they can also be a hybrid of sorts whereby they include projects, but they also include parameters for ongoing operations, and State Parks has done several PWPs related to Park units (e.g., Gray Whale Ranch and Wilder Ranch State Park PWPs in Santa Cruz County). Thus, in short, here State Parks decided to pursue a PWP to govern Park operations, including to replace the base CDP, and has been working on it since that time.

<sup>155</sup> For example, in February 2019, State Parks released for public comment a list of potential identified projects that could be undertaken as part of the PWP. One of the projects was a new additional

discussed previously, in July 2019, the Commission voted to provide State Parks direction on the PWP moving forward, including requiring that it address 15 short-term management measures, as well as explore a transition away from OHV use in the longer term (see Exhibit 12). The Commission also voted to require State Parks to bring the PWP to the Commission for its consideration in a public hearing in one year by summer 2020. Again, perhaps most notable from the Commission's 2019 action was its clear finding, transmitted to State Parks via a letter signed by the Chair, that made clear that, in light of the serious coastal resource and legal constraints affecting the Park's current operations, the future of the Park needed to be one without OHV use in it. As such, whether through the PWP, a future CDP review, or other regulatory instrument, State Parks needed to evaluate what an OHV-free Park would look like. The Commission stated:

*Ultimately, the Coastal Commission concluded and decided that ODSVRA cannot continue to operate as it has while complying with the base CDP, the Coastal Act, and the LCP, and that it is time to explore alternatives to transition ODSVRA away from high-intensity off-highway vehicle (OHV) use to other forms of public access and recreation in order to meet Coastal Act requirements.*

While it was the Commission's expectation that the PWP would be submitted in time for a summer 2020 Commission hearing, due to various factors, including the Covid-19 pandemic, a new State Parks director, and requests from the Natural Resources Agency, the Commission agreed to hold off on a public hearing regarding the Park's future in 2020, and give State Parks more time to develop the PWP, agreeing that Parks proposal to submit the PWP by the end of December 2020 was appropriate. On December 31, 2020, State Parks released its draft PWP, a draft EIR on the draft PWP, and related documents. Ultimately, the draft PWP is supported by State Parks' draft HCP (and a draft EIR and Environmental Assessment on the draft HCP), which was distributed for public comment earlier in 2020, and by an "Oceano Dunes Biodiversity Management Plan" prepared by the California Department of Fish and Wildlife (CDFW) (submitted on February 3, 2021). See Exhibit 15 for the proposed PWP, and see Appendix A for these supporting documents.

## **B. PWP Projects**

As proposed by State Parks, the draft PWP both accommodates a series of proposed projects at various locations throughout the Park, and also includes provisions for addressing Park operations more broadly.<sup>156</sup> With respect to the former, the PWP includes a series of major projects, as briefly summarized below:

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campground and OHV staging, riding, and entrance at Oso Flaco Lake. This project not only presented what appeared to be serious LCP inconsistencies related to agricultural conversion and ESHA degradation, at a minimum, but instead of circumscribing Park uses and activities in ways that resolve the problems identified, it actually appeared to increase OHV use and related coastal resource impacts associated with same.

<sup>156</sup> And, as noted earlier, the PWP applies to areas within the Oceano Dunes District, of which the Park is a subset.

- **Corporation Yard Improvements.** Park corporation yard infrastructure and other improvements at the existing maintenance facility in the dunes just north of the Oceano campground off of Highway 1 between West Grand and Pier Avenues, including additional staff housing, improved park maintenance and operations facilities, a new two-story park operation building, expanded parking and storage, and a new paved road through the dunes to connect to the beach for State Parks vehicles.
- **Oceano Campground Improvements.** Replace and re-arrange existing campsites 1-42 to improve circulation and Park maintenance access, upgrade roads, and install new electrical/water/sewer hookups at the Oceano campground off of Pier Avenue.
- **North Beach Campground Improvements.** Construct a new entrance kiosk to the campground, and upgrade infrastructure (including raising it above flooding levels) at the North Beach campground off of Highway 1 in Pismo Beach.
- **Butterfly Grove Improvements.** New access improvements, including new parking lot, wayfinding signage, and pedestrian trails from Highway 1; new utilities and a restroom facility; and habitat restoration, at the Monarch Butterfly Grove adjacent to the North Beach Campground in Pismo Beach.
- **West Grand and Pier Avenue Kiosks.** Replace the two existing entrance kiosks with new and larger ADA-compliant structures.
- **West Grand and Pier Avenue Lifeguard Facilities.** Construct new lifeguard facilities on top of existing restroom buildings (i.e., adding a second story) near both entrances.
- **Dune Boardwalk.** Install a public access boardwalk in the dunes between West Grand Avenue and Pier Avenue, and from Pier Avenue to Arroyo Grande Creek, and restore dune habitat.
- **Oso Flaco Lake Improvements.** Convert a 116-acre active agricultural property adjacent to Oso Flaco Creek Road and surrounded by Oso Flaco Lake, Little Oso Flaco Lake, and Oso Flaco Creek to campgrounds and corporation yard uses, including: 100 drive-in campsites; 200 RV campsites; 20 cabins; cleared space for special events, food trucks, and day-use facilities; a new access route across Oso Flaco Creek/Little Oso Flaco Lake and through the dunes for OHVs to access the OHV riding area; new pedestrian trails; and park maintenance, staff housing facilities, parking, vehicle car wash, and related corporation yard improvements.
- **Phillips 66 Improvements.** For the 1,800-acre Phillips 66 property (should State Parks get some type of acquisition/easement on it), convert the existing dunes and petroleum processing facility to: 33-acre pro track/OHV obstacle course; 15-acre multi-use lighted OHV area with mile-long track; 25-acre OHV staging area; OHV training center and OHV historic museum; weapons range for State Parks and area peace officer training; equestrian staging; a new access route across the Union

Pacific railroad corridor and through the dunes for OHVs to access the OHV riding area; new pedestrian trails; and 225 RV campsites and another 170 car-camping campsites.

See project descriptions in the PWP, including State Parks proposed site plans and related information for these projects in Exhibit 15.

At a broad level, the PWP proposes to expand public recreational access, particularly camping and OHV use through new acreage and infrastructure dedicated to such use. However, while some of the above major projects may be able to be found LCP consistent in some form (e.g., lifeguard facilities, Butterfly Grove improvements, dune boardwalks, infrastructure improvements in existing developed areas, etc.), others raise LCP concerns (e.g., corporation yard and camping improvements that extend out of existing developed areas and into various habitat areas, including a road through the dunes), and some raise significant LCP concerns (i.e., projects in the Oso Flaco Lake and Phillips 66 areas). In terms of the latter, the two proposed projects at Oso Flaco Lake and the Phillips 66 property envision multiple hundreds of camping and RV spaces (including cabins), multiple new entrances for OHVs to access the current riding area, additional new area for OHV use (e.g., new staging area, pump tracks, lighted area, training area, etc.), and related development (including rental/concessionaire space, an OHV historic museum, weapons range, etc.) that cannot be found LCP consistent.

### ***Phillips 66 Improvement Project***

First, with respect to the Phillips 66 project, there is clearly a developed area at the site (occupied by Phillips 66 buildings and infrastructure) that could potentially be repurposed. The rest of the site, however, and surrounding the developed portion, is known to be ESHA. In fact, dunes at the Phillips 66 site were determined to be ESHA recently by both the Commission's staff ecologists and by the County during the CDP application for the Phillips 66 Santa Maria Refinery Rail Spur Extension Project, a CDP application that was denied by the County in 2017 in large measure for that reason.<sup>157</sup> And the proposed PWP project would lead to a similar conclusion, including because the new intensive development proposed is not allowed in ESHA under the LCP, and would eliminate ESHA entirely under its footprint. Furthermore, any ESHA areas remaining would be fragmented by the proposal, and there is no opportunity for a buffer from such development (and noise, lights, and activities) as would be required under the LCP as well. In addition, it would appear to raise the same types of concerns about uses and intensities of use as are currently raised at the Park. Thus, these projects would not only exacerbate those problems overall, but they would raise LCP

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<sup>157</sup> The project sought to build new infrastructure for trains to carry crude oil to and from the refinery. Doing so would have expanded the rail lines outside of the refinery's existing developed footprint and into surrounding dune areas, which were deemed ESHA. Because the project was not resource-dependent and would have led to significant disruption of ESHA (and indeed conversion of ESHA to industrial development), it was denied for those reasons (in addition to other LCP inconsistencies). While that project focused on a roughly 20-acre expansion area nearest the developed portion of the site, it was identified at the time that sensitive plant species are known to be present throughout, and with requisite buffers, it is likely that much, if not all, of the entire 1,800-acre warrants such protection under the LCP.



consistency issues attributable to each. In short, the PWP's proposed Phillips 66 project cannot be found LCP consistent.

***Oso Flaco Lake Area Improvement Project***

In terms of the proposed Oso Flaco Lake area project, it too suffers from a lack of LCP consistency. First, the project itself is proposed atop 116 acres of prime, actively cultivated agricultural lands that are all LCP-designated as Agriculture. The LCP is very protective of agricultural lands, mirroring Coastal Act requirements in this regard, including by strictly limiting conversions of such lands. For example, LUP Coastal Plan Policy 1 mirrors Coastal Act Section 30241:

*Policy 1: Maintaining Agricultural Lands*

*Prime agricultural land shall be maintained, in or available for, agricultural production unless: 1) agricultural use is already severely limited by conflicts with urban uses; or 2) adequate public services are available to serve the expanded urban uses, and the conversion would preserve prime agricultural land or would complete a logical and viable neighborhood, thus contributing to the establishment of a stable urban/rural boundary; and 3) development on converted agricultural land will not diminish the productivity of adjacent prime agricultural land.*

Coastal Plan Policy 1 requires prime agricultural lands to be maintained in or available for agricultural production, and only allows conversion of such lands to other non-agricultural uses under exacting circumstances, none of which are met in this case. First, the agricultural use is not severely limited by conflicts with urban uses. In fact, it is located in a fairly remote area adjacent to extensive agricultural lands, with the only other development being State Parks small parking area for Osos Flaco Lake area day use. As to the second test, the proposed project would need extensive new infrastructure to serve it, including new roads and road widening, sewer, and water infrastructure. Thus it doesn't meet the criteria of there being adequate services. In addition, it would not only not preserve prime agricultural land as the LCP requires, but it would convert it to non-agricultural purposes. And it would not "complete a logical and viable neighborhood" nor help with a stable urban/rural boundary. On the contrary, the property is located in a remote agricultural and habitat area to which access is gained by the narrow Oso Flaco Road. In short, the project is not consistent with Policy 1.<sup>158</sup>

Coastal Plan Policy 3 does allow for some limited non-agricultural uses on agricultural lands to help bolster its economic viability, but the proposed project is inconsistent with that policy too. For one thing, the policy does not allow conversion of prime agricultural lands, and the proposed project converts all 116 acres of it. Policy 3 states:

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<sup>158</sup> State Parks asserts that the property was purchased to be used for recreational purposes and they designate it for same in their general plan, and thus that alone should dictate that it is allowable under the LCP. However, that is not how LCP analysis works, and the proposal would need to meet all LCP tests irrespective of the ways in which State Parks envisions the potential use of the land.

*Policy 3: Non-Agricultural Uses*

*In agriculturally designated areas, all non-agricultural development which is proposed to supplement the agricultural use permitted in areas designated as agriculture shall be compatible with preserving a maximum amount of agricultural use. When continued agricultural use is not feasible without some supplemental use, priority shall be given to commercial recreation and low intensity visitor-serving uses allowed in Policy 1.*

*Non-agricultural developments shall meet the following requirements:*

*a. **No development is permitted on prime agricultural land.** Development shall be permitted on non-prime land if it can be demonstrated that all agriculturally unsuitable land on the parcel has been developed or has been determined to be undevelopable.*

*b. **Continued or renewed agricultural use is not feasible** as determined through economic studies of existing and potential agricultural use without the proposed supplemental use.*

*c. **The proposed use will allow for and support the continued use of the site as a productive agricultural unit and would preserve all prime agricultural lands.***

*d. **The proposed use will result in no adverse effect upon the continuance or establishment of agricultural uses on the remainder of the site or nearby and surrounding properties.***

*e. **Clearly defined buffer areas are provided between agricultural and non-agricultural uses.***

*f. Adequate water resources are available to maintain habitat values and serve both the proposed development and existing and proposed agricultural operations.*

*g. Permitted development shall provide water and sanitary facilities on-site and no extension of urban sewer and water services shall be permitted, other than reclaimed water for agricultural enhancement.*

*h. The development proposal does not require a land division and includes a means of securing the remainder of the parcel(s) in agricultural use through agricultural easements. As a condition of approval of non-agricultural development, the county shall require the applicant to assure that the remainder of the parcel(s) be retained in agriculture and, if appropriate, open space use by the following methods:...  
(emphasis added)*

The intent of the policy above is to provide for things like wine tasting rooms on vineyards that are incidental to the primary production purpose of the land, not to completely convert agricultural lands to a fundamentally different land use. The project cannot meet Policy 3 because it converts prime agricultural land when that is prohibited,

because there is no evidence to suggest that continued agricultural use is infeasible (and its active use suggests the opposite), and because it does not allow the continued use of the site as a productive agricultural unit. Further, the provisions of Policy 3 that are geared towards ensuring that incompatible uses don't limit adjacent agricultural productivity can't be met either. Specifically, even if it were an LCP-allowed conversion, it would require that measures be put in place to avoid adjacency impacts. For example, buffers are typically applied to avoid the kinds of problems that can occur with incompatible adjacent uses (e.g., where the adjacent non-ag uses, such as recreational uses, might lead to user complaints about the remaining ag that could reduce its viability), and these types of buffers have ranged from 25 to 500 feet in past coastal cases.<sup>159</sup> In this case, there would be no buffers nor other tools applied to protect against adjacency impacts when this is required by the LCP.

In short, the PWP's proposed Oso Flaco Lake project cannot be found consistent with the LCP's agricultural requirements.<sup>160</sup>

In addition, the ag property is bordered to the north and west by the Oso Flaco Lake/Little Oso Flaco Lake/Oso Flaco Creek habitat system. This corridor is a significant habitat resource corridor, known not only for the lakes, streams, wetland, and riparian corridors associated with same, but also including that the area is foraging habitat for California least tern, potential red legged frog breeding habitat (with occurrences of CRLF noted), tidewater goby critical habitat, and habitat for at three listed plant species.<sup>161</sup> The LCP requires setbacks of at least 100 feet from such ESHA, and that setback is required to be increased if the resource demands a larger distance. These resources provide significant habitat value and would be expected to require larger buffers, and would also likely limit what intensities could be allowed at all even outside of those buffers (e.g., related to limiting noise, lights, activities, domestic pets, etc.).

Part of the project would also include new access to the riding area across the Oso Flaco Lake habitat corridor. There are also questions about whether the type and level of development intensity proposed by State Parks could be accommodated in any form in this area, including given part of what makes it a protected area is its remote and quiet nature, and a proposal to change this, such as the proposed project, would raise

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<sup>159</sup> See, for example, Commission deliberations for UCSC's CLRDP in Santa Cruz where issues regarding the sufficiency of buffers to protect adjacent agricultural lands were a primary concern.

<sup>160</sup> The LCP includes another policy regarding agricultural use in State Parks, but that policy does not offer any respite from the above requirements: "Policy 11: Agriculture Use in State Parks. In processing State Park and Recreation development plans and projects for park units within the coastal zone, the county shall require that: 1) the development retain the maximum amount of agricultural soils (prime and non-prime) in agricultural production within each State Park unit; b) the Department provide site specific justification for removing agricultural soils (prime and non-prime) from production or for not offering lands capable of farm production for lease."

<sup>161</sup> Including two extremely rare and endemic plants, marsh sandwort and Gambel's watercress, both of which are listed as endangered under both Federal and State ESAs, and that otherwise only exist at one other location in the world.

serious LCP coastal resource concerns other than in terms of agriculture and ESHA (including in terms of impacts to that current recreational use, public views, public services, etc.). It would also change the ways in which users access the Park, which could have its own set of impacts (e.g., with respect to traffic, etc.). Further, as with the Phillips 66 project, it would appear to also raise concerns about exacerbating the types of problems that already occur at the Park, including facilitating new access through ESHA to access the Park.

And finally, the Commission's CDP specifically closed down OHV related activities in this area in the 1980s in order to allow it to function as a low intensity and passive recreational use area, including in light of the sensitivity of the resources. And the proposed improvements would be inconsistent with the existing CDP's terms and conditions, including Special Condition 1(c), which only allows for low-intensity, passive recreation (such as the existing parking lot, trails, and boardwalk) at the site.<sup>162</sup> The condition also specifically states that OHV staging and OHV use are not allowed in this area, including to protect the immediately adjacent Oso Flaco Lake, Little Oso Flaco Lake, and Oso Flaco Creek from intensive development impacts.<sup>163</sup>

*Oso Flaco Lakes Area: An off-highway vehicle staging area shall not be constructed at the Oso Flaco Lake site indicated on Exhibit C. As part of the fencing proposed in this project, the Oso Flaco causeway to the PSVRA shall be permanently closed to vehicular traffic.... The state owned agricultural lands south of Oso Flaco Lakes may be utilized for the development of a campground for passive recreational use of the dune areas within the Park excluded from OHV use. The State Parks and Recreation Department shall amend its General Development Plan accordingly. **Uses in this camping area shall be permitted only if consistent with the resource protection policies of the San Luis Obispo County Land Use Plan;** 100 foot buffering setbacks from the lakes, creek and wetlands shall be applied at a minimum with greater setbacks required if necessary, only resource dependent uses and passive recreational activities shall be permitted. (emphasis added)*

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<sup>162</sup> The condition also states that a low-impact campground could potentially be sited in the agricultural fields, but only if otherwise consistent with the LCP. This is an important caveat given the LCP doesn't allow for agricultural conversion for this type of use, including as evidenced by the cited LCP policies. The Commission recognizes the potential for additional public access amenities in the Oso Flaco area, including the potential for a small, low-cost, low-impact, primitive campground, particularly given that the area is owned by State Parks. Such proposal, along with restoration of the floodplain with riparian vegetation, may be beneficial for the Oso Flaco Lake complex's ecological health. However, doing so would require an LCP amendment, including with requisite analysis on impacts and potential mitigation measures on agricultural lands, the Oso Flaco Lake riparian area, and on the dune environment.

<sup>163</sup> It should be noted that Oso Flaco Lake is listed on the Central Coast Regional Water Quality Control Board's 303(d) list of impaired water bodies for nitrates, while Oso Flaco Creek is listed for ammonia and nitrates. This is not uncommon for watercourse areas that are adjacent to agricultural operations. Despite this, the area serves as important habitat for listed species, including being mapped foraging habitat for terns and designated critical habitat for tidewater goby. As such, ensuring the continued protection and enhancement of the habitats here, including in terms of required restoration and buffers, would need to be countenanced.

A high-intensity campground with several hundred RV spaces and cabins (along with a new State Parks maintenance and operations center with employee housing and a vehicle car wash) that converts the entirety of the existing agricultural lands, along with new OHV access routes through undeveloped dune ESHA, is not consistent with the base CDP.<sup>164</sup>

In sum, the PWP proposed Oso Flaco Lake area project cannot be found consistent with the LCP.

### ***Other Projects***

The PWP also includes a series of what it refers to as smaller future projects, including the previously mentioned project to open up a currently off-limits and untouched dune ESHA area to OHV activities adjacent to Oso Flaco Lake, a new seasonal bridge over Pismo Creek (north of the Park boundaries), and replacement of the OHV safety and education center in the dunes. As discussed previously, the 40-acre OHV expansion area cannot be found consistent the LCP, and thus this proposed project in the PWP cannot be approved. In addition, the other projects simply lack enough detail to be able to determine whether they could be found LCP consistent. These projects would need to be much further fleshed out in any subsequent PWP versions.

### **C. PWP Operations**

And with respect to operations management measures, a large part of the impetus for the PWP was to rethink such measures in order to better protect sensitive habitats while also addressing vehicular and camping needs, particularly in light of potential changes to where and how such recreational offerings were to be provided. Another part of State Parks' stated objectives was to coordinate the various planning efforts that affect Park operations (e.g., the HCP effort, dust control efforts, and more recent collaborations with the California Department of Fish and wildlife), and to update and refine operational measures all in one place. And finally, at the Commission's July 2019 CDP review, the Commission recommended a series of very specific management measures that were to be addressed by the PWP, most of which directly affect operations (see Exhibit 11). Unfortunately, the draft PWP does not meet these goals and objectives, nor does it truly address the Commission's requirements.

### ***Disconnected Planning Processes***

First, although the PWP references the draft HCP and CDFW's Oceano Dunes Biodiversity Management Plan documents (also discussed further below, and see Appendix A), they are very much separate documents, and State Parks does not intend them to be a part of the PWP that would be certified by the Commission (i.e., only PWP Volume 1 would be before the Commission). So, while these documents can offer direction to State Parks as regards Park management, they cannot offer enforceable direction under the PWP (and thus under the Coastal Act and LCPs), including as they

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<sup>164</sup> Thereby raising questions about whether the Commission could even consider this type of project as it would weaken the intent and effect of an existing condition, which isn't allowable per CCR Section 13166(a).

could be modified in ways that may not be allowable by the Coastal Act and the LCPs without a PWP amendment. And even if they were to be made part of the PWP, they have not been developed in a manner that could easily become an operational manual of sorts within the PWP, rather they have been drafted for their singular purposes, and it would take significant work by State Parks to integrate them coherently into the PWP, including to smooth out various differences in the documents (e.g., USFWS recommends one buffer for sensitive bird species, and CDFW recommends another, and that is but one example).

Similarly, the PWP also references its draft EIR, including for mitigation measures, but again, this would not be before the Commission as part of the PWP. And even if it (or components if it) were to be made a part of the PWP, it would require significant work on State Parks' end to do so in a coherent manner that could be relied on for Park operations. In addition, the draft EIR suffers from a similar foundational error as does the PWP in that it presumes all of the activities at the Park are already allowed and 'vested', and thus it doesn't directly ask nor answer the key Coastal Act, LCP, and coastal resource questions that are in front of the Commission in this CDP review.<sup>165</sup> Again, as described in some detail earlier, the uses and intensities of use at the Park have not been permanently authorized by the Commission, and the Commission had understood that a primary purpose of this PWP exercise was to assess the impacts of current uses and intensities of uses, and to arrive at a Coastal Act and LCP consistent Park. In addition, the draft EIR uses a series of sources that are not the Coastal Act and the LCPs to define what constitutes ESHA, and concludes that "Unvegetated habitat types such as beach strand or unvegetated dunes are not considered ESHA for the purposes of this EIR" (DEIR Biological Resources section page 7-4). In other words, the DEIR categorically dismisses the fact that the San Luis Obispo County LCP identifies the vast majority of the Park, including its 'unvegetated dunes' as ESHA. In short, the draft EIR would require significant re-working for it to be of use as part of the PWP.

Also, and significantly given the articulated goal of bringing all of the disparate pieces of the Park's operational puzzle together, the PWP does not address the dust, air quality, and public health issues associated with Park operations, at all, instead suggesting that these will be addressed separately in State Parks negotiations with the APCD. As discussed in some detail earlier in this report, while these issues are some of the more vexing issues associated with uses and intensities of use at the Park, the PWP simply does not address them. And the DEIR simply presumes all of these impacts as the baseline for analysis, and thus does not even evaluate the impacts from Park activities in relation to dust (which are considerable, as detailed earlier in this report). The only air quality mitigation measures recommended by the DEIR are related to construction equipment and activities that would be associated with the proposed PWP projects. And even for those, the DEIR suggests that "the available riding area is not changing and there is no data to suggest that the [PWP Projects] would result in a tangible change in areas used for recreational purpose" (DEIR Air Quality Section 6-17). However, as

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<sup>165</sup> The DEIR states: "This EIR does not analyze specific impact of ongoing Park management" (DEIR page 1-4).

discussed earlier, State Parks proposes to: reduce the seasonal enclosure by 109 acres (and open up this area to year round vehicular/OHV use); open up an untouched and currently off-limits 40-acre dune ESHA area to OHV use; add several new OHV accessways through the untouched and currently off-limits dune ESHA areas inland of the riding area; and create significant new acreage that would be devoted to OHV uses at the Phillips 66 site. Not only does the EIR need to evaluate current impacts, but there is no way that it can suggest that “the available riding area is not changing” to dismiss having to evaluate impacts at all, as that statement is inaccurate.

Further, the DEIR also does not evaluate how all of the proposed new recreational and OHV activity areas associated with the Phillips 66 and Oso Flaco Lake projects might alter the manner in which users make their way to these southern portions of Park, and impacts associated thereto (i.e., associated with new traffic, greenhouse gas emissions, etc.). And finally, although dust associated with Park activities does not stop at the San Luis Obispo County border, and in fact extends into northern Santa Barbara County adversely affecting the City of Santa Maria (and the Santa Maria Valley) and the City of Guadalupe (which would only be more pronounced if activities were expanded in the southern portion of the site as the PWP proposes), neither the PWP nor the DEIR even mentions (let alone address) the dust, air quality, and public health problems in Santa Barbara County that are engendered by Park activities.<sup>166</sup>

In short, despite the stated goal of bringing the variety of disparate plans and planning efforts together under the auspices of the PWP, the PWP does not meet this objective. And as a result, its ability to act as a potential vehicle to address ongoing operational issues is deficient. In addition, the ways in which the various documents assume that the current levels of use and intensities of use at the Park is already established under the Coastal Act and the LCP also is inaccurate, as is the suggestion that essentially none of the vehicular/use areas of the Park constitute ESHA (including relying on a non-Coastal Act and non-LCP framework to arrive at such faulty conclusion). And although more the purview of the APCD, the PWP/DEIR suggests there are no dust, air quality, or public health problems associated with Park uses that need to be addressed. As a result, the PWP (and its supporting documents) in its current form is not structured in such a way that it could be relied on to address ongoing operations issues at the Park.<sup>167</sup>

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<sup>166</sup> And, in fact, the Santa Barbara APCD (SBAPCD) is very concerned about these impacts, including recently affirming that State Parks needs to also ensure that their activities meet SBAPCD air quality requirements. Even if the PWP and DEIR adequately addressed air quality issues in San Luis Obispo County, which they clearly don't, as described above, both documents would need significant changes to adequately address Santa Barbara County air quality issues too.

<sup>167</sup> And indeed the PWP by itself is also structured in a manner where it is confusing as to where the enforceable standards lie, because there are multiple locations where similar issues are covered, leading to the potential for internal inconsistency, but also simply difficulty in understanding what is required by it. Any PWP that could be successful at the Park would need to be reorganized in such a way that State Parks, the Commission, and the public can readily understand its requirements.

### ***PWP Operational Standards***

Perhaps just as concerning regarding the PWP is that for almost all of the operational activities it describes, it asserts that these things are all “routine programs exempt from Coastal Act compliance” (PWP page 3-64). The PWP indicates that they are identified in the PWP “for disclosure purposes”, but that they are “ongoing and routine maintenance and management programs [that] do not require any specific notifications or permits.” In other words, in place of circumscribing these activities in the PWP in a manner that the PWP governs them and the PWP requirements associated with them are enforceable, State Parks proposes to continue to do them without any underlying Coastal Act or LCP authorization. Such activities include maintaining the West Grand and Pier Avenue vehicular ramps, maintaining Park fencing (which, as detailed earlier can involve significant grading and other activities in dune ESHA), establishing and managing the seasonal enclosure (and other sensitive species enclosure), “capping” cultural sites, removing riparian vegetation for flood control, maintaining trash dumpsters at Post 2 (including dragging dumpsters up and down the beach from near Post 2 to the Pier Avenue ramp), street sweeping and disposal of sand collected on West Grand and Pier Avenues, mechanical beach grooming for trash purposes (which has been shown to be one of the most habitat-degrading activities that can occur in beach/dune areas), and grading of less than 50 cubic yards (note for reference that 50 cubic yards is roughly equivalent to five 10-wheel dump trucks of materials).<sup>168</sup> These activities constitute development under the Coastal Act and LCPs, the vast majority of which are not authorized in any CDP, and raise significant Coastal Act and LCP consistency questions. Many of these activities would be expected to lead to significant coastal resource degradation, including to ESHA.

In addition, many of these operational activities have been tracked by the Commission as CDP violations, as State Parks is aware. And to State Parks’ assertion that such ‘routine’ maintenance is exempted from CDP requirements, that is a misreading of the Commission’s regulations. Commission staff have repeatedly informed State Parks staff that the Commission’s regulations (14 CCR Section 13252) identify that these types of activities in and near ESHA (and explicitly on any sand area or anywhere located near coastal bluffs, streams or the ocean) require a CDP. And these are precisely the types of activities that have raised Commission concerns in the past, including concerns related to beach grading, grooming, and sensitive species manipulation that led to the Executive Director CDO in 2020.

In fact, a primary objective of the PWP from the Commission’s perspective was and is that it be sufficiently detailed to be able to cover all of the operational methodologies being applied at the Park, in both the least environmentally damaging feasible manner possible, as well as in a way that is enforceable under the PWP. The proposed PWP does not meet this objective. In fact, the PWP does not propose to cover essentially *any* of these ongoing activities that have concerned the Commission for so many years. Rather, State Parks appears to be suggesting that it should be allowed to continue to do

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<sup>168</sup> Where the PWP also indicates that grading of more than 50 cubic yards may also be ‘exempt’ in the same manner, although it doesn’t provide any concrete criteria for such a determination.



all of the activities that it has been doing without benefit of a CDP, and that it should be allowed to continue to do so without CDP or other coastal authorization, and without any enforceability under the Coastal Act.

In short, State Parks' PWP is structured in such a manner that the Commission has no role in establishing any standards related to such operational concerns, that it will continue to do them without a CDP or any other Coastal Act/LCP-required authorization, and that it will undertake these activities absent any enforceable methodology for the Commission to be involved under the PWP. On the contrary, the PWP is and was meant to provide the Coastal Act and LCP sideboards to such ongoing activities, not to allow them unchecked and in a manner that can degrade coastal resources, especially ESHA.

***Coastal Commission's July 2019 Direction***

And, as discussed previously, in July 2019, the Commission voted to provide State Parks direction on what it expected to see in the PWP moving forward, including requiring that it address 15 short-term operational and other management measures in terms of ongoing operations, as well as explore a transition away from OHV use in the longer term (see Exhibit 12). In terms of the fifteen management measures, several of them are related to the structure of the CDP (e.g., how to manage potential internal CDP conflicts, indemnification, etc.), while the remainder focused on changes that the Commission required State Parks to address "as permanent conditions within the PWP process" (almost all related to reducing vehicular/OHV impacts).

In terms of the latter, the PWP addresses some, but not of the issues identified by the Commission in 2019. For example, for several of the Commission's requirements, State Parks commits to enhancements, but the framework surrounding the commitment is vague, and it is difficult to measure (e.g., related to outreach to underserved and tribal interests, better rule enforcement, etc.). For others, State Parks partially addresses the requirements, but not fully (e.g., eliminating the TRT, but not replacing it with a more standard mechanism for monitoring Coastal Act/LCP compliance and reporting to the Commission). In yet others, the PWP commitment to addressing the Commission's requirements is either lacking detail (such as the requirement for enhanced predator management activities) and/or only conceptual (e.g., addressing the issue of open trash containers at Post 2), and thus there is no certainty in the draft PWP that these issues will be addressed.

The only Commission requirement that is met by the PWP outright is where it eliminates exceptions to maximum use daily limits (i.e., for street-legal, camping, and OHVs) on certain holidays, reflecting the fact that the CDP allows such exceptions while State Parks has long indicated that it doesn't allow such exceptions as a matter of policy. The PWP also partly addresses the Commission's directions to lower said limits, where the draft PWP proposes to reduce these maximum daily limits from the CDP's current daily limits (camping would be reduced from 1,000 to 500 units, OHVs reduced from 1,720 to 1,000 OHVs, and street-legal vehicles from 2,580 to 1,000 vehicles). However, these use limits are rarely reached in the first place, and State Parks estimates that average

usage levels are much lower, stating that only 25% of the street-legal vehicle limit (or put another way, 645 vehicles per day), 10% of the OHV limit (172 OHVs per day), and 45% of the camping limit (450 units) are reached during other than holidays and summer weekends. In addition, the OHV and camping area has shrunk by some 175 acres since 2017 as a result of State Parks' dust control efforts (i.e., whereby State Parks has revegetated/restored vehicular/OHV areas as natural dune (and/or placed them off limits) in order to allow the dunes to heal and thus to reduce dust). The proposed lower maximum limits therefore appear to more closely comport to actual current usage levels (use levels that are currently leading to the types of coastal resource problems identified by the Commission in 2019) than to be an attempt to address the impacts caused by current intensities of use. While this portion of the PWP results in a reduction in overall Park *allowed* maximum intensity, it does not appear to be a true reduction in the current level of use intensity, as envisioned by the Commission's direction, including as the area available to such uses has already shrunk. Further, State Parks indicates that it intends to pursue another carry capacity study for the Park, and the PWP identifies that these limits are subject to change after that study is complete, but the PWP includes no provisions for the Commission to assess whether any future changes in intensity of uses are consistent with the LCPs or Coastal Act.

Perhaps most problematic is the fact that for many of the Commission's requirements, the PWP simply does not make the corresponding change. For example, the Commission required measures that would prohibit vehicular crossings of Arroyo Grande Creek, and that would prohibit nighttime vehicular/OHV use. Neither of these measures are carried forth in the PWP, rather the PWP continues to allow both, and suggests that State Parks will further study the issue for potential future changes. As described earlier, these activities result in some of the most significant adverse impacts to the Park's sensitive habitats, which is why the Commission required that they be addressed as permanent conditions of the PWP.

Similarly, the Commission required an entrance study to address all of the many issues associated with the two accessways into the Park at West Grand and Pier Avenues, and especially with respect to the ways vehicular use of these entrances affect habitat and other coastal resources (including in terms of Arroyo Grande Creek crossings, displacing other beach activities for several miles of beach fronting Grover Beach and Oceano, etc.). In place of an evaluation of options, State Parks simply concludes that the two entrances are the environmentally superior entrances and they should be deemed permanent. And then, in addition to those entrances, State Parks proposes new OHV entrances in the south (at Phillips 66 and at the Oso Flaco Lake area). Instead of evaluating the potential to decrease impacts associated with the entrances, State Parks proposes to keep them as is, and proposes to *increase* coastal resource impacts associated with Park entrances by adding new entrances with their own adverse impacts (as discussed above). In addition, although the Commission was concerned with the proliferation of special events at the Park, and identified that there needed to be an evaluative Coastal Act/LCP process associated with same, the PWP simply identifies that there may be special events, some of them quite large and with the

potential for significant coastal resource impacts. But these events are not covered by the PWP but rather through special event permits issued by the District Superintendent outside of the PWP context.

Another significant PWP deficiency is related to the roughly 300-acre seasonal enclosure located along the beach and foredunes in the southern part of the Park. As described earlier, the seasonal enclosure is intended to protect nesting snowy plover and California least tern from March through September annually, and the underlying areas is open to public use (including for camping, street-legal vehicles, and OHVs) the other five months out of the year. Due to continued and long-standing concerns that the seasonal arrangement was inappropriately impacting sensitive species/ESHA, the Commission's 2019 requirement was that State Parks address as a permanent condition of the PWP that this area be made a permanent enclosure and that its boundaries be modified to better match habitat areas (and thus slightly increased in size). Instead of adhering to this requirement, State Parks instead proposes to keep the enclosure seasonal, and to reduce its spatial extent by 109 acres, where those 109 acres would then be available to vehicular/OHV use all year round. In addition, State parks proposes to expand OHV riding in the same general area as the newly opened up 109 acres into a currently off-limits and restored dune ESHA area nearest Oso Flaco Lake, to add an additional 40-acres of OHV area to the overall riding area. In other words, in place of *more* habitat protection in the form of 300 acres being set aside for habitat purposes permanently as required by the Commission, State Parks proposes to reduce even existing habitat protections, to expand OHV use into untouched and vegetated dune ESHA, and to overall increase intensities of vehicular/OHV uses at the Park, in the area least appropriate for such uses, at the southern habitat enclosure and adjacent to Oso Flaco Lake.

In addition, the PWP explicitly does *not* address dust, air quality, or public health issues associated with same even though one of the Commission's 2019 requirements was that dust control be explicitly accounted for in depth, including in terms of applicable measures to be applied, when, where and how they would be applied, and coordination with the APCD and CARB. Again, and as a result, the interrelationships between coastal resource issues and constraints that overlap with dust, air quality, and public health are simply not addressed by the PWP.

And finally, the Commission was clear that, in light of the serious coastal resource and legal constraints affecting the Park's current operations (as detailed in this report), the PWP should evaluate transitioning from OHV use in the Park. As such, whether through the PWP, a future CDP review, or other regulatory instrument, State Parks needed to at least evaluate what an OHV-free Park would look like. The proposed PWP does not do this. In fact, it takes the current OHV area and expands it into ESHA (in relation to the southern enclosure and Oso Flaco Lake area), it proposes a significant OHV expansion area at Philips 66 (including new OHV use areas as well as new OHV roads through untouched and currently off-limits dune ESHA area), and it proposes new OHV access through dune and Oso Flaco Lake area ESHAs as well. Rather than evaluating options to transition away from OHV, the PWP instead proposes a future that supports and

expands OHV use. And ultimately, the DEIR too summarily dismisses eliminating OHV uses at the Park, asserting that to do so would be inconsistent with PRC Sections 5008<sup>169</sup> and 5090; without any assessment of the requirements of such laws that require protection of natural resources.

While the Commission appreciates the significant time and effort taken by State Parks to compile its draft PWP, it has significant shortcomings from a Coastal Act and LCP perspective. In addition to Coastal Act and LCP consistency problems with its proposed PWP projects, its organizational structure is difficult to follow, and it essentially does not provide any enforceable mechanisms to address ongoing operations in a manner that is adequately protective of coastal resources, including as directed by the Commission in 2019. Thus, in its current form, the PWP is not consistent with either applicable LCPs or the Coastal Act, and it does not address the Commission's direction and requirements from the last CDP review in July 2019.

#### **D. Habitat Conservation Plan and Biodiversity Management Plan**

The PWP is also supported by State Parks' draft Habitat Conservation Plan (DHCP) (see Appendix A), which was released for public comment in February 2020 and largely proposes to authorize State Parks' existing Park operations and protocols related to its recreational offerings and habitat management measures (i.e., authorize the status quo), with some notable exceptions. In addition to new programs related to mechanical trash removal (i.e., beach grading and grooming to collect trash) and threatened chick relocation (i.e., physically relocating listed birds away from OHV and camping areas), the DHCP also proposes new programs for additional OHV and camping acreage. For example, the DHCP proposes to reduce the existing 300-acre seasonal southern enclosure to 191 acres, and thus seasonally increasing OHV use by 109 acres. In addition, the DHCP proposes opening to OHV use another currently off-limits 40-acre dune ESHA area supporting native dune vegetation very near to the seasonal enclosure and Oso Flaco Lake, both as discussed above.

The Oceano Dunes Biodiversity Management Plan (BMP) (see Appendix A) was prepared by CDFW to assist State Parks in better understanding impacts and issues associated with vehicular/OHV use on the Park's special status plant, bird, and invertebrate species (see Appendix A). The BMP is premised on the framework that vehicular/OHV use, along with other PWP-proposed projects such as that at Oso Flaco Lake, will continue to be provided at the Park, and seeks to better manage associated impacts. Rather than including specific, detailed management and operational changes, the BMP mostly recommends additional study of various issues, including related to

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<sup>169</sup> PRC Section 5008 states in operative part: "The department shall protect the state park system and the state vehicular recreation area and trail system from damage and preserve the peace therein." Ostensibly, State Parks is arguing that Section 5008 suggests that eliminating OHV uses would "damage" the Park. However the exact opposite is true, as the use in question is what is damaging the Park currently, as discussed in some detail in this report, and Section 5090 (and the Coastal Act and LCPs) speak to curtailing such recreational uses when they are leading to the types of problems that the OHV use is leading to at the Park. Thus, it is unclear how such a conclusion as regards PRC Section 5008 is supportable.

night riding impacts, Arroyo Grande Creek crossing impacts (and the feasibility of an Arroyo Grande Creek temporary bridge), appropriate habitat enclosure sizes/locations, and potential habitat impacts associated with the Oso Flaco Lake project. CDFW suggests that these studies can serve to inform a Natural Communities Conservation Plan (NCCP), where CDFW can holistically look at the Park and understand and mitigate impacts as a whole. The BMP recommends State Parks to begin the NCCP process by February 2021 and complete it within five years. Until such NCCP is in place, CDFW recommends that all take of State-listed species be avoided.

On this point it is again noted that the Coastal Act and the LCPs do not allow for the types of impacts to sensitive species and habitats that the NCCP program (or HCPs or CEQA) might. Rather, the Coastal Act and the LCPs do not allow for prohibited activities in ESHA, and do not allow for any activities that would significantly disrupt ESHA, whether such impacts are offset otherwise or not.<sup>170</sup> As such, an NCCP (or an HCP, or both) are not required to protect ESHA in the same way that the Coastal Act and the LCPs are required to protect ESHA, and thus can't necessarily serve to meet Coastal Act and LCP ESHA requirements.

While the BMP is mostly a broad document that identifies future studies and action, there are two important specific recommendations. The first is that the BMP recommends an expansion of plover nest enclosures from 100 feet to 492 feet (150 meters), and terns from 330 feet to 984 feet (300 meters):

*Reasons for retaining these buffers included reducing the chances that a chick was killed or injured, reducing the chances that adult birds would be flushed from nests thereby increasing the vulnerability of chicks/eggs, and minimizing the energetic costs to adults and chicks associated with flushing (Cox et al 1994, Burger 1984).*

The other BMP proposal is the creation of a Biodiversity Management Plan Team (BMP Team) comprised of representatives from State Parks and CDFW to ensure the BMP's recommendations are carried out:

*A Biodiversity Management Plan Team (BMP Team) will be established, with representatives from both agencies, which will meet quarterly to coordinate on ongoing conservation efforts at the Oceano Dunes District park properties and the recommendations and follow up actions outlined in this plan. The BMP Team will strive for consensus decision making when possible. The roles and responsibilities of the BMP Team are to:*

- *Ensure good communication between partners and resolve communication gaps between all involved parties;*

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<sup>170</sup> Again, see, for example, the published *Bolsa Chica* appellate decision described earlier.

- *Conduct annual consultation on the Nesting Season Management Plan in advance of the nesting season;*
- *Coordinate the preparation of the annual CLT and WSP nesting season report.*
- *Coordinate efforts to address water quantity and quality of the Arroyo Grande Creek watershed resulting from upstream management practices by third parties. This would include sharing any county reports of pollution and any CDFW, County, and/or State Water Resources Control Board, and/or Regional Water Quality Control Board enforcement actions, and relevant CDFW permits (streambed alteration agreements, etc.);*
- *Initiate the NCCP by January 2021 to include monthly meetings (separate from and additional to the BMP Quarterly meetings) that will focus on the development of an NCCP (additional meetings will be scheduled as needed to discuss technical issues/studies and specific recommendations/mitigations);*
- *Develop and carry out an effective public communications strategy between the agencies; and*
- *Ensure that a process for conflict resolution exists and is utilized.*

A few important points should be made about the proposed HCP and BMP. With respect to the HCP, as more thoroughly described in Commission staff comments sent to State Parks regarding it and its associated DEIR (see Appendix A), both documents raise significant concerns regarding the assessment of Coastal Act and LCP consistency and the protection and enhancement of the area's habitats. While the purpose of an HCP is to minimize and mitigate to the maximum extent practicable the impacts caused by State Parks' proposed "covered activities" (including motorized recreation, camping, and natural resource management), it appears that the DHCP instead outlines management protocols that would actually *decrease* existing protection for such species. For example, the area in which the enclosure would be reduced and instead made available for OHV and camping use between 2005 and 2018 was the location of 25–45% of all plover and 35–80% of all tern nests during the breeding period. CDFW also voiced similar concerns in its December 21, 2020 comment letter to State Parks (emphasis added):

*The reduction of available nesting habitat and increased disturbance from HCP activities occurring within and adjacent to these areas may also cause SNPL, CLTE and other migratory bird species **to discontinue their use of these areas and the HCP area in general.** This would impact not only the populations of these species but also the **area's use as a Pacific Flyway Migratory Route and overwintering area for a variety of bird species, thus causing long-term and permanent impacts** to several bird species nursery and foraging sites,*

*including SNPL, CLTE and California brown pelican (Pelecanus occidentalis californicus) (CBP). (emphasis added)*

And in each case, whether it was to dismiss an alternative or to justify a preferred outcome, the DHCP and its associated environmental documents (the draft EIR and draft EA) cited the need to maintain, and indeed expand, vehicular recreational uses and opportunities as an objective, notwithstanding this objective appears directly at odds with sensitive species protection. For example, the DEA evaluated alternatives that made the seasonal enclosure year-round and maintained its 300-acre size (similar to the Commission's 2019 direction to State Parks). But the DEA dismissed this alternative because of concerns that doing so would reduce areas available for vehicular recreation. The DEA states (on page 73):

*This loss of shoreline access conflicts with project objectives to balance conservation and recreation demands, particularly to preserve, manage, and expand recreational opportunities and to manage, maintain, and maximize unique coastal camping and recreational amenities. CDPR concluded the HCP as proposed (Proposed Action Alternative) better meets project objectives of operating the covered park units in a manner that provides for public use and enjoyment while conserving park resources and preserving, managing, and expanding motorized and non-motorized recreational access*

And the rejection of these alternatives is despite the fact that the DEA acknowledges their potential benefit to listed species. For example, with respect to the potential to make the southern enclosure year-round, the DEA states (on page 49):

*Results from studies conducted by Dr. Jenny Dugan and Dr. Mark Page (Marine Science Institute at the University of California Santa Barbara) suggest the 7-month closure of breeding habitat during the breeding season is not a sufficient period of time for invertebrates, which are a food source for SNPL, to effectively recover species diversity and abundance along the Southern Enclosure shoreline following natural winter population declines associated with the 5 months of recreational use. In addition, a year-round enclosure would ensure that vegetation and microtopography impacts from winter-season motorized recreation would be reduced. As a result, establishing the Southern Enclosure as a permanent year-round enclosure would have, at least temporarily, a beneficial impact on SNPL breeding and wintering habitat by reducing impacts to invertebrates, vegetation, and microtopography from winter recreation.*

In this quoted text, the DEA concurs with the Commission's assessment that year-round maintenance of the southern enclosure is appropriate for habitat purposes, including as it would allow for natural recovery of the beach macroinvertebrate community, which provides key food-chain support for listed species. Yet, despite acknowledging this clear benefit, the DEA dismisses this option on grounds that are unrelated to species and habitat protection.

And with respect to the BMP, while there are some sound recommendations made for better habitat management based on the scientific literature (i.e., plover and tern exclosure measurements), and while additional study is important, two important points should be highlighted. The first is that the BMP is premised on a continuation of the OHV status quo as a starting point, and thus it suggests committing significant resources and efforts to develop future management measures to mitigate for vehicular/OHV impacts. However, such resources wouldn't be needed, or at a minimum would be needed much less, should those impacts be avoided in the first place.

The second is that the proposed program is premised on collaboration between State Parks and CDFW without recognition that the Commission is required to protect ESHA under the Coastal Act. The BMP Team is composed of representatives of those two agencies working in collaboration with other state agencies to address resource issues, including the Regional Water Board to address water quality problems. However, the Commission is not included as a member of the BMP Team.

Essentially, between the PWP proposing to replace the CDP, and the HCP and BMP framed around habitat collaboration between State Parks and USFWS and CDFW, respectively, these documents do not ensure required Coastal Act consistency because they do not include the Commission as having regulatory oversight in this proposed structure. This is particularly true because the HCP and BMP documents, as currently proposed by State Parks, are not technically part of the PWP. While the PWP cross-references both documents, State Parks does not intend either (including all of their listed habitat management recommendations) to be subject to Commission review and approval. Only the main PWP document itself is proposed to be subject to the Commission's review and approval authority. The result is that there would no longer be a mechanism for State Parks to ensure that development at the Park, including activities that could have significant adverse impacts to coastal resources, would be reviewed and regulated by the Commission. Instead State Parks would primarily rely on their consultation with USFWS and CDFW, with little Commission review to ensure consistency with applicable ESHA-protection policies, even though, as indicated, NCCP and HCP processes are not a good proxy for Coastal Act and LCP consistency.

## **E. Conclusion**

While State Parks has envisioned the PWP and its associated documents to reimagine the Park in light of modern needs and to address the coastal resource problems and issues the Commission has consistently identified over the years, the draft plan falls short of that goal. While there are a few concrete proposals that help to implement the Commission's previous directives to State Parks, the PWP is largely a codification of existing protocols (e.g., not closing Arroyo Grande Creek to vehicular traffic, not prohibiting OHV use at night, and not making the plover exclosure year-round) along with broad statements, without sufficient details on how certain directives will be carried out. For example, the Commission required that trash needed to be covered immediately, including to protect against predation issues for sensitive species, but the PWP doesn't list specific protocols but rather recommends to: "Identify specific locations



for trash enclosures and a schedule for service with measures to modify the number and size of enclosures and service based on regular monitoring”.

In addition, while the PWP was supposed to serve as the place to rethink the Park’s operations in light of its various constraints, including critically in terms of protection of ESHA and addressing air quality, the PWP does not include any new details on this issue. The PWP does not commit to a specific amount or area of dust mitigation/dune restoration to further advance air quality, despite the fact that the scientific consensus is that several hundred acres of dune restoration (particularly within the foredune areas nearest the beach and in the backdune areas within the La Grande property that are the most emissive) are going to be needed. And such measures will affect how Park uses are sited and are allowed to operate, and thus raise questions under the Coastal Act and LCPs, including the manner in which that is to be accommodated in light of other Coastal Act and LCP objectives.

The PWP’s most significant changes are actually at odds with the Commission’s directions, with new projects that would further adversely affect LCP-protected coastal resources. The PWP proposes mechanical trash collection/beach grooming on several miles of sensitive beach habitat,<sup>171</sup> and the proposed 109-acre reduction in the enclosure, the new 40-acre riding area, the Oso Flaco improvement project, and the Phillips 66 project collectively will essentially double the amount of dune ESHA used for OHV and camping purposes. Importantly too, these projects are simply not approvable under the LCP for the reasons previously discussed, including in terms of ESHA conformance, but also with respect to the conversion of prime agricultural lands. And lastly, the proposed PWP construct is one that would effectively remove any mechanism for ensuring Coastal Act consistency at the Park.

As currently drafted, the PWP is not consistent with the San Luis Obispo County and Grover Beach LCPs or the Coastal Act and would need extensive changes in order to make it so.<sup>172</sup> Given the serious deficiencies of the proposed PWP, the Commission believes that it would be beneficial to provide guidance on the kinds, locations, and intensities of use that can be allowed at the Park under the LCPs and Coastal Act to inform a revised PWP that could be approved under the LCPs and Coastal Act. Such guidance includes explicit regulatory changes to the Park to effectuate the changes needed to address longstanding concerns regarding LCP and CDP compliance,

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<sup>171</sup> Beach grooming includes debris removal that involves leveling, contouring, smoothing, sifting, and similar sand manipulation using machinery. The Commission has in the past raised significant concerns with beach grooming when special status species are present in the beach environment, such as limiting beach grooming activities in Southern California on beaches associated with grunion runs (see for example, CDPs 4-05-155 and 4-10-066 for the Santa Barbara Harbor and Waterfront Area, and 4-10-061 for City of Carpinteria).

<sup>172</sup> The PWP also includes a list of activities that it says are exempt from CDP requirements, like grading of less than 50 cubic yards and other routine maintenance projects. However, as described in detail in the Consent EDCDO in July 2020, such activities are development under the Coastal Act that require a CDP and do not qualify for any of the Coastal Act’s CDP exemption criteria given the Park’s location in ESHA. As such, that PWP section alone would require significant revision to make sure it comports with the law.

including with respect to dunes and ESHA, and environmental and tribal justice, so State Parks has clear direction regarding the changes needed to make its PWP approvable under the law.

## 11. Commission-Required Changes and Next Steps

As described in the preceding analysis, there are issues that require a fundamental rethinking of both the Park's substantive recreational offerings as well as the regulatory tools to govern them.

The Commission has to date used its discretion through the annual review process to allow Park activities to continue, based on temporary and interim use parameters (as adjusted most recently in 2001) for decades. It has become clear, however, particularly with new scientific studies and facts available to the Commission, that the coastal resource issues and constraints affecting vehicular operations at the Park are only becoming more acute. The evidence has, in fact, reached a point where it is clear that vehicular and OHV use in ESHA is not consistent with the CDP, the Coastal Act, or the LCPs. Thus, in order to ensure LCP and Coastal Act consistency the Commission cannot continue to allow the Park's status quo without changes, as it has in the past. In fact, fundamental issues and constraints related to the CDP and its relation to LCP compliance, rare and endangered species and habitats and ESHA, environmental justice, and tribal concerns all point to the need for the Commission to act to exercise the discretion provided to it by the CDP to help start to resolve the significant coastal resource problems associated with ongoing uses and intensities of uses at the Park. The above discussion of issues and constraints affecting Park operations makes clear that changes are needed, and they are needed immediately.

The Commission must evaluate the type of changes needed to comply with Coastal Act and LCP objectives and requirements related to maximizing public access and recreational opportunities in a manner respectful and responsive to the identified significant environmental, public health, environmental justice, and legal constraints. In essence, based on the facts and the law, what uses and intensities of use can be accommodated at the Park, and what does that mean for the Park's future moving forward? It is that question above all that provides the framework and foundation for this CDP review, within which the Commission is required to apply the Coastal Act and LCP provisions described earlier.

### **A. Public Comments Received**

On this point, some have argued that the Park should continue to provide high-intensity vehicular recreational opportunities throughout its acreage. Others have argued that the natural resources present suggest the Park should function more as a preserve with much more limited recreational offerings. Finding this balance between natural resource protection and public access and recreation – sometimes competing objectives – has been the crux of the regulatory debate at the Park throughout its history.

Since the release of the staff report for the July 2019 CDP review, staff has received some several thousand emails and letters regarding the Park. These comments were

received for the July 2019 hearing, as well as for the four PWP updates before the Commission, and the July 2020 hearing for the dust control CDP and CDP amendment. While some might think that that body of correspondence would reflect the opposite ends of the spectrum for visions for the Park, and in many ways it does, it also provided some important trends and commonalities, including what uses people stated they value most, what draws them to the Park, and how they want resources protected.

Specifically, while there were clearly a large number of people advocating for retaining, and in many cases expanding, OHV activity because of its unique recreational offering, and while there were an equally large contingent of people who advocate for eliminating OHV altogether for its impact on sensitive habitat, air quality, and the Oceano community, both sides tended to also cite the importance the Park plays in public recreational access generally. The vast majority of people – both for and against OHV use – highlighted the importance of retaining public access for hiking, for beachgoing, for camping, and for the important gathering place for family bonding and vacationing that the Park provides. Really, perhaps the most obvious trend, such as it is, was that almost all OHV supporters also cited beach camping as a critical part of their enjoyment of the Park. As did a majority of non-OHV supporters. In fact, beach camping emerged as perhaps the most important of these recreational pursuits across the comment spectrum. See Exhibit 14 for a complete description and accounting of comments received since the last set of comments the Commission reviewed for CDP review in July 2019, all of which are part of the correspondence package for this item.

That is not to say that there weren't an equal number of OHV supporters and detractors, because there were, but it also points to a potential place of compromise as the majority of the coastal resource concerns identified in the analyses above accrue to OHV use. In other words, vehicular use might be allowable in non-ESHA areas (again, see the ESHA map in Exhibit 10) provided it didn't lead to significant disruption of ESHA, meaning that vehicular beach camping in non-ESHA areas, provided it were properly contained and managed, could continue to provide for a unique recreational offering at this Park. This is an important piece of the puzzle that will inform ultimate decisions here.

## **B. Economic Impacts**

Some have argued that the Park should not be changed from its current allowed uses and intensities of use because to do so would result in an adverse economic impact to the nearby communities and the region as a whole. And many point to an economic impact analysis<sup>173</sup> (Analysis) State Parks commissioned to measure the effect of recreational activities conducted in the Oceano Dunes District<sup>174</sup> on the San Luis

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<sup>173</sup> "Oceano Dunes District – California State Parks Economic Impact Analysis Report 2016/17", by SMG Consulting.

<sup>174</sup> The Oceano Dunes District includes both ODSVRA and Pismo State Beach State Park units, meaning that the Park, as discussed in this report, is made up of land in the Oceano Dunes District as well as San Luis Obispo's near 1,000-acre La Grande property (a portion within which vehicular/OHV use is currently occurring), and the Phillips 66 buffer area that is untouched and off-limits dune ESHA just inland of the riding area.

Obispo County economy. The Analysis concluded that the District brings in an estimated \$243 million annually to the San Luis Obispo County economy and generates some 3,300 local jobs based on surveys collected in 2016-17. This study follows the same type of analysis that State Parks commissioned and was conducted in 2010-11 that concluded the economic impact of visitors to the Park was then estimated to be \$160 million.<sup>175</sup> Citing the Analysis, some argue that removing OHV use or in any way significantly modifying its current operations is a price too high to pay for the local economy.

However, at the July 2019 CDP review hearing, and in response to the Analysis' claims, the Commission received a critique of the Analysis<sup>176</sup> by a professor of Real Estate Finance at California Polytechnic State University. The critique raised a series of questions regarding the Analysis' methodology and conclusions, including that it only looked at estimated gross benefits without identifying the costs that are associated with Park operations, and that it asked participants questions about whether they would still use the Park if it had no recreational offerings. In other words, the critique posited that, even if the \$243 million benefit was accurate (or even a lesser amount given methodological problems with the generation of that number), the actual benefit was much lower because the costs to the area (in terms of public health impacts, Park operations and maintenance needs, and the like) were not included. It also suggested that the wrong question was asked; namely that the question is not whether to keep the Park open as it currently exists versus closing it to all use, but rather what uses and intensities of use are appropriate at the Park. Because of these alleged study errors, the critique concluded that the analysis was flawed and should not be given credence to justify retaining the Park's status quo due to economic considerations.

Given the difference in scope and conclusions of the two economic impact reports and questions raised by the California Polytechnic State University professor, the Commission desired an independent expert third-party evaluation of the Analysis to best understand its conclusions regarding the effect of the Park to the local economy, and, ideally, to better understand how a change in the range of activities offered at the Park might affect its contribution to that economy.

Thus, the Commission engaged Dr. Phil King, a professor of economics at San Francisco State University, and an expert on evaluating the economic impacts of park and recreation areas, to peer review the Analysis (see Exhibit 13 for the results of his peer review, and his qualifications).<sup>177</sup> Ultimately, Dr. King's peer-review identified many

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<sup>175</sup> "Oceano Dunes SVRA Economic Impact Analysis Report 2010-2011", by SMG Consulting.

<sup>176</sup> From Dr. Pratih Patel, Associate Professor at the Orfalea College of Business at California Polytechnic State University, dated July 9, 2019.

<sup>177</sup> Two additional things are noted regarding Dr. King's peer review. One is that Dr. King asked the Commission for the underlying data supporting the State Parks' Analysis; Commission staff then requested the information from State Parks; and State Parks' staff indicated that they did not have or have access to the underlying data. As a result, Dr. King could not review that data to help inform his review of the Analysis. And second, Dr. King was not provided the 2019 critique from Dr. Patel, including

of same flaws with State Parks' economic analysis as Dr. Patel, including in terms of the methods employed to gather data as well as the conclusions it offers. With respect to the former, Dr. King noted that the report appeared to not follow sampling methods of the Institutional Review Board to assure that all surveys and methodologies employed are consistent with standard professional procedures. This omission, combined with a lack of clarity regarding the sampling methods (to the extent they were articulated in the Analysis), including in terms of potential biases from who was asked to participate in the survey, raises questions about the validity of the survey's results.

And with respect to the Analysis' conclusions, Dr. King points out numerous fundamental flaws, the first being that the report calculates the Park's economic *impact* as its economic *benefit*.

*Further, the use of economic impact reports as a tool to mitigate/address these situations has been roundly criticized in the economics profession for decades. Simply stated: economic impacts are NOT the same as economic benefits applied in a benefit cost analysis....most economic impact reports estimate the economic impacts of a given activity and then assume that if this activity ceases all of the economic impacts would be lost.*

In other words, the Analysis estimates only the positive economic effect; doesn't quantify any of the costs associated with that benefit (e.g., costs associated with general operations and maintenance, habitat degradation, air quality impacts, hospitalizations due to vehicular/OHV use, etc.); assumes that if OHV use were discontinued then the Park would generate zero economic benefit (as opposed to a potentially modified series of offerings at the Park that would generate their own benefits and costs); and framed the question to survey respondents in terms of whether they would continue to come to San Luis Obispo County at all if the Park did not exist (as opposed to would they still come to the Park if it provided certain recreational offerings and not others). Dr. King states:

*Furthermore, this report incorrectly assumes that should OHV recreation cease in the area, participants and spectators will not be replaced by other visitors, and therefore the report does not consider the potential impact of that substitution. It is my professional opinion that this key assumption is completely erroneous.*

Relatedly, the Analysis assumes that all spending in the area (and all Park economic benefit) would cease completely if OHV uses were to be displaced. However, the Park provides a wide range of recreational offerings in addition to OHV uses (including, in addition to more typical beach/dune recreational opportunities, the unique opportunity for 'car camping' on the beach, vehicular access to the beach, etc.). And it is simply inaccurate that a Park that continued without OHV uses would not have any visitors and would not generate any economic benefits, and there is no evidence to support such an

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to ensure that his evaluation was not affected by Dr. Patel's observations. Ultimately, in any case, Dr. King and Dr. Patel both raised similar issues and concerns with the Analysis.

allegation. In addition, a Park without OHV is likely to attract other recreationalists for whom OHV is *not* a draw to the area, and the Analysis does not even attempt to quantify how such an action would change economic benefits and costs, simply stating that without OHV uses the economic benefits of the Park (not the net benefits, but gross benefits) would cease. While it is clear that a Park without OHV uses would *change* the Park's costs and benefits, and it is a fair question as to what that change would do for the local economy, it is not accurate or fair to suggest that there would be no economic value to the Park if there were no OHV uses. As Dr. King states:

*In particular, I would note that the economic losses estimated in this report essentially assume that most spending by OHV users will disappear AND will not be replaced by other visitors (hence, the \$0 estimate). In Table 3 below, if an OHV user does not stay overnight and spend the \$262 per trip on lodging, this report assumes that this room will be vacant and generate no income. This assumption is absurd. Given the high demand for beach vacations and beach access in California, it makes no sense to assume that hotel rooms and campsites will be left vacant...*

Dr. King notes that those who choose not to venture to the Park without OHV use will be replaced by those who choose to travel there to experience its rather unique offering of eight miles of beachfront and thousands of acres of protected dunes, lakes, streams, and wetlands in close proximity to urban communities with developed visitor-serving amenity infrastructure (e.g., hotels/motels, campgrounds, restaurants, shops, gas stations, etc.):

*The study does point out that OHV users are much less likely to go the ODSVRA but does not account for all the users who might go if the OHV activities were reduced or eliminated. It is very possible that many visitors would be more likely to go if the ESHA were preserved...*

In short, Dr. King finds that the State Parks' Economic Analysis significantly overestimates OHV's economic value to the area, including because the Analysis doesn't even quantify OHV costs; it equates *all* Park benefit to OHV benefit, as if OHV is the sole source that can provide any economic activity, including disregarding other forms of recreation (and corresponding economic activity associated with it) that would take its place; and it uses a suspect methodology that significantly overestimates the resultant benefits.<sup>178</sup> Dr. King also indicates that the Analysis essentially asks the wrong questions, and thus is not an appropriate nor valuable tool for decision-makers in that regard. In fact, the more appropriate set of questions and evaluation would be based on the costs and benefits of different recreational offerings at the Park, and State Parks' analysis does not provide a means to that end due to its methodological problems. In other words, a more informative analysis would calculate costs and benefits of a variety

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<sup>178</sup> On the latter, and as Dr. King points out, the Analysis uses a unique method for determining the benefit that by itself exaggerates the amount, and there even appears to be a mathematical error that inflates even that exaggerated amount by an additional \$120 million, or nearly half of the reported overall effect.

of alternatives for the Park, both with and without OHV use, but that is not what the Analysis does.

It is clear that a Park with no OHV would not have zero economic benefit, and it appears clear to the Commission that a different type of Park with different use patterns would simply have different effects on the local economy. There would be some individual winners and losers in that economic analysis (e.g., businesses that cater exclusively to OHV use would be displaced if OHV use was not allowed), but there would also be different opportunities, and it would be expected that the Park would remain a vibrant State Park unit that was a valuable asset to the area (as is generally the case up and down the state with State Parks, and there is nothing to suggest that would not be the case here). In fact, some would suggest, including Dr. King, that a different Park that did not provide OHV uses would be at least as valuable to the region economically as the current Park operation. Dr. King states:

*Based on the information presented in this report, as well as my twenty five years of experience studying beach economics, and information on visitor spending I have collected from other studies, it is my expert opinion that the long term economic impacts to the local community of suspending OHV use will be limited.*

Again, a Park without OHV use would clearly be an economic hindrance for certain businesses, namely those that cater to the OHV use (such as OHV rentals). However, as discussed in Dr. King's analysis, businesses that are not now potentially viable due to OHV use will gain new opportunities, including catering to different recreational offerings, such as providing bike rentals and other beachgoing products for other users drawn to the Park's new and different recreational offerings, including new camping experiences for those that seek a less intensive form of coastal recreation. The Commission believes that OHV use can be eliminated without significant economic hardship to the region, including as evidenced by Dr. King's analysis.

Furthermore, Dr. Patel provided an updated analysis in early 2021. In that analysis he found, based on empirical data from transient occupancy taxes (TOT) and employment numbers, that the loss of OHV use in 2020 (due to Covid-19 restrictions) didn't materially lead to any economic loss in the Oceano/five cities area. In fact:<sup>179</sup>

*Overall, average monthly TOT revenue in 2020 was \$23K relative to \$21 K in 2019 - **Oceano's revenue, actually, increased.** It is worthwhile to compare the actual increase in Oceano's TOT revenue against SMG's predictions. According to the SMG study, 62% of the survey participants indicated that they would not visit the County if OHV activity were not allowed. While this may be the case for OHV visitors, it is certainly not the case for the pedestrian*

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<sup>179</sup> From *Economic Impact From Suspension of the Vehicular Use at the Oceano Dunes SVRA*, Dr. Pratish Anilkumar Patel.

*and equestrian visitors. Not only are the visitors coming to Oceano but also, they are staying at the Oceano hotels generating more revenue for the County.*

In other words, Dr. Patel agrees with Dr. King, that a new and different Park without OHVs that is less vehicle centric would still be a foundational cornerstone to economic prosperity for the region.<sup>180</sup>

And, to this point, the Commission notes that this sentiment appears to have gained some traction in the local Five Cities<sup>181</sup> and south County area, including for local communities directly adjacent to the Park that see an untapped potential to create an even better economic model for the Park that can be built on a more sustainable set of recreational opportunities, and one that will bring benefit to their communities. Prior to preparing this report, Commission staff held a series of outreach meetings to discuss Park issues and understand from community stakeholders (including business representatives), groups (including the OHV community), and local governments about their visions for the future of the Park. Many acknowledged the potential for the Park to cater to new and diverse users that would venture to the Park's new and diverse recreational offerings, particularly lower cost and unique offerings that could be provided at the Park absent OHV use (e.g., car camping, beach bicycle riding, equestrian tours, dune tours, new beach-oriented concessionaires (e.g., beach and surf equipment, kayaks, fishing, etc.)).

Notable among this group is the Oceano Advisory Council, which is the County body that represents the Oceano area and that provides recommendations to the Board of Supervisors regarding Oceano matters.<sup>182</sup> The Council voted in 2019 to endorse the 2019 Commission staff recommendation regarding phasing out OHV use to provide for the positive economic development that the community needs, including as described previously regarding environmental justice issues, and reiterated support for the Commission phasing out OHV use, closing down the Pier Avenue entrance, and other non-OHV changes in 2021.

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<sup>180</sup> State Parks indicates that its operating budget for the Park is some \$12 million, which appears to be derived from the OHV trust fund (described subsequently) and that Park revenues are \$2.6 million annually (based on FY 2016-2017 numbers, the most recent available). It is not clear that that fund would continue to be a revenue source for a reimagined Park. In any case, it is also clear that a Park without OHVs would require significantly less money to operate, not only in terms of general operations needs but also in terms of the \$2 million that State Parks estimates its spends on habitat programs (such as the southern enclosure), where this money is currently spent as a result of vehicular/OHV activities in that area where, should they cease, then a lesser form of habitat protection expenditure would be needed (i.e., \$2 million is spent to protect habitat from vehicles/OHV and offset impacts that accrue thereto).

<sup>181</sup> Named for the cities of Pismo Beach, Grover Beach, and inland Arroyo Grande, as well as Shell Beach (part of the City of Pismo Beach) and Oceano.

<sup>182</sup> Note that because Oceano is an unincorporated County area, it does not have a city manager or the like, and the Oceano Advisory Council is the closest thing to a local version of such leadership there is, in addition to the Board.



And finally, the period of time that the Park was closed to vehicles/OHV due to Covid-19 in 2020 was an eye-opener for many in the community. Without such more intensive uses, the Park still saw significant general beach use fronting both Grover Beach and Oceano, where such uses did not have to dodge vehicles. In addition, as described earlier, the Park also saw an explosion of habitat activity in the southern part of the Park as the beach and dunes were left alone and sensitive species thrived relatively undisturbed. And during all of this time local government and community leaders confirm that there isn't evidence to suggest that the economy has been adversely affected by the loss of OHV use. To the contrary, reports from local governments (as well as Dr. Patel's assessment above) indicate that economic activity did not precipitously decline, and actually increased in certain areas, including significant TOT, notwithstanding the Park was closed to vehicles and OHV for much of the year. In other words, this time allowed for real life experiment of sorts that portends what a Park without OHV can result in for the local community.

In short, while State Parks' economic study has been cited as evidence of OHV's positive economic impact on the local community and thus used as justification to retain it, there are numerous flaws with its methods and findings. Perhaps most notable is that it does not compare the economic benefit that a Park with different recreational offerings would provide, including with respect to enhanced day-use beachgoing and overnight camping use. And as evidenced by the public comments received and the discussion with local officials and business groups, there is a growing recognition of a new paradigm regarding the positive economic effect that an OHV-free Park could provide. The public's comments, the discussion with local community officials, and the economic analysis to date are all helpful and instructive in terms of understanding what *should* this Park be into the future.

### **C. Off-Highway Vehicle Law and the Coastal Act/LCPs**

And on the latter point, some have argued that under the relevant OHV laws (i.e., the Off-Highway Motor Vehicle Recreation Act specified in Public Resources Code (PRC) Section 5090.01-5090.65, as amended [hereinafter the "OHV Laws"] – see Exhibit 5), State Parks is legislatively required to allow for OHV use at the Park.<sup>183</sup> Therefore, according to this argument, the Commission is prohibited from making any changes to the scope of OHV use at the Park, including precluding the Commission's ability to phase out or eliminate OHV use because the Park is legislatively required to allow the use of OHVs, notwithstanding any requirements of the Coastal Act, or other applicable law, that would dictate otherwise. Put differently, they claim the law establishing OHV use within certain State Park units essentially "overrides" the Coastal Act and other applicable state laws. However, this argument is unsupported by canons of statutory interpretation, that require that laws, such as the OHV Laws and the Coastal Act, be

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<sup>183</sup> Or at least at the SVRA portion of the Park (again, see Exhibit 1).

harmonized. And, similar to the Coastal Act, OHV Laws require that recreation be consistent with the protection of natural resources.<sup>184</sup>

While the Commission does not implement the OHV Laws, and they are not its standard of review, in order to address the argument identified above, this report reviews some provisions of these laws. First, in a similar construct to the Coastal Act's public access and recreation policies, it is important to note that the OHV Laws support and encourage OHV recreational use, but not at all costs. The Legislature has recognized that the "indiscriminate and uncontrolled use of [OHVs] may have a deleterious impact on the environment, wildlife habitats, native wildlife, and native flora" (PRC Section 5090.02(a)(3)). Recognizing this, the Legislature has stated that ecologically balanced recreation requires effectively managed areas for OHV use, as well as conservation and enforcement (PRC Section 5090.02(b)). Accordingly, when OHV use is leading to problems, such as is the case at the Park, then it is appropriate to shut down that use if necessary to protect sensitive natural and cultural resources. For example, PRC Section 5090.02(c)(4) states: "When areas or trails or portions thereof cannot be maintained to appropriate established standards for sustained long-term use, they should be closed to use and repaired, to prevent accelerated erosion. **Those areas should remain closed until they can be managed within the soil conservation standard or should be closed and restored**" (emphasis added). Similarly, PRC Section 5090.35(a) states: "The protection of public safety, the appropriate utilization of lands, and the conservation of natural and cultural resources are of the highest priority in the management of the state vehicular recreation areas." Thus, in these laws, the Legislature recognized the potential natural and cultural resource constraints associated with OHV use and expressly allowed closure of OHV riding areas where natural and/or cultural resources are impaired.

Second, the Legislature was also clear that the OHV Laws do not preempt other State laws, including the Coastal Act (and by extension the LCPs). PRC 5090.39(b) states: "Nothing in this chapter relieves [State Park's OHV Division] from compliance with state and federal laws and regulations, including permit requirements." Notably, when drafting the Coastal Act, the Legislature included instructive text on how the Coastal Act relates

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<sup>184</sup> Some advocates have also argued that state law requires OHV use at ODSVRA in particular. This is not true, and ODSVRA is not mentioned at all in the Public Resources Code. Rather, it is mentioned only in State Park's regulations. First, in 13 CCR Section 2415, where State Parks has designated it as an OHV area. Second, in 14 CCR Section 4609, which lists regulations specific to ODSVRA. Contrary to arguments made before the Commission, it would not take an act of the legislature to amend or eliminate these regulations. Further, it is not even clear that these State Parks regulations would need to be modified in any way if OHV use was discontinued there, and rather that these two references could remain untouched because they would be immaterial to the outcome at the Park, including as the OHV Laws themselves require protection of natural resources. Further, Section 4609 speaks to all vehicular use at ODSVRA, both street legal and OHV use, and only allows vehicles to be operated within the boundaries identified by the District Superintendent. Thus, consistent with that section, the District Superintendent can map a boundary consistent with this regulation that shows no area where vehicular use is allowed (or at the least no area for OHV use and some area for street-legal vehicles, as is being suggested in this report). Finally, of course, State Parks could decide to pursue changes to conform their regulations to the outcome of this CDP review, but that is a choice, not a requirement.

to other state agencies and their applicable laws. While the Coastal Act states that it is not meant to be *duplicative* of other state laws,<sup>185</sup> it is also clear that “All state agencies shall carry out their duties and responsibilities in conformity with [the Coastal Act]” (Coastal Act Section 30402 – see Exhibit 4). The Legislature also clarified in Section 30214 that the Coastal Act’s non-duplication provision “shall not be construed to limit in any way the regulatory controls over development”. The Legislature is presumed to have been aware of the 1976 Coastal Act when it later drafted the initial OHV Laws in 1982, and if it had wanted to preempt the Coastal Act, it would have. It did not. Taken together, the OHV Laws state that they do not preempt other state laws, while the Legislature required other state agencies to carry out their missions in full conformity with the Coastal Act. In other words, by law, not only do the OHV Laws *not* preempt or otherwise overrule the Coastal Act, the OHV laws are explicitly required to be carried out *in conformity with* the Coastal Act.

In short, the Coastal Act and the LCPs support public recreational access, but also require such recreation to be undertaken in a manner that doesn’t lead to adverse impacts to natural resources, and allow for the reduction or even cessation of such recreational uses so as to meet applicable legal resource protection requirements. The facts indicate that OHV use at the Park no longer meets these requirements, and that elimination of OHV use under the circumstances that apply here is consistent with the Coastal Act. At the same time, and while the Commission is not the final arbiter that implements the OHV Laws, it does not appear that such an action would be inconsistent with the OHV Laws either, nor that any act of the Legislature would be required were OHV to be eliminated pursuant to the Coastal Act and the LCPs.<sup>186</sup>

#### **D. OHV Trust Fund (Who Pays for the Park?)**

Finally, in light of some commentors’ suggestions that the Commission cannot make changes to OHV use intensities at the Park because OHV users bought the Park and pay for its continued upkeep, several things should be noted. Specifically, some have argued that ODSVRA (and the other eight SVRAs in the State Parks system) must retain OHV use given the funding to purchase and operate these parks (and this Park) comes from OHV users per the OHV Trust Fund (OHVTF). The OHVTF receives a portion of the State’s taxes imposed on motor vehicle fuel use based on a formula that estimates the amount of fuel used by OHVs and street-legal vehicles (such as SUVs and light trucks) that can be used for OHV purposes. On this assertion, a few things to

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<sup>185</sup> Except as specifically provided in the Coastal Act, the Coastal Act does not “increase, decrease, duplicate or supersede the authority of any existing state agency.” The Coastal Commission has the authority to regulate development in the coastal zone, although it “shall not set standards or adopt regulations that duplicate regulatory controls established by any existing state agency pursuant to specific statutory requirements or authorization” (Coastal Act Section 30401).

<sup>186</sup> On this point some OHV commentors have referred to old quotes from Peter Douglas, the Commission’s former Executive Director, to suggest that the Commission lacks the authority to redesignate the Park. However, the point being made in these quotes is that it is not the Commission’s role to designate State Park units, that is up to State Parks, and if any laws need to be changed, the State Legislature. Mr. Douglas’ prior statements have nothing to do with the Commission’s authorities under the Coastal Act and the LCPs, which exist now as they did when he was so quoted.

note, first is that it is well documented that non-OHV users augment the OHV Trust Fund.<sup>187</sup> Caltrans has recently estimated that the amount of fuel pumped that is attributed to OHV purposes (and thus attributed to OHV use) appears to be overestimated by 300%.<sup>188</sup> This is primarily due to the fact that while SUVs and four-wheel drive vehicles have exploded in popularity, they are not all used for OHV activities, and the fuel tax formula has not been adjusted to account for this. Thus, the Fund overestimates the amount of fuel used (and thus the amount of fuel taxes collected) by SUVs and other street-legal vehicles for OHV purposes, and thus fuel taxes completely unrelated to OHV use are collected, put into the OHVTF, and used for OHV purposes. In other words, a large number of people that purchase gas in California have a percentage of their contributions to the fuel tax (which is otherwise used for a variety of public service purposes that are not OHV-related) go into the OHV Trust Fund, even though they don't actually engage on OHV activities. Thus non-OHV consumers are also contributing to the fund.

In fact, according to the numbers from the above-referenced recent Caltrans investigation, such contributions from non-OHV users represent approximately 70% of the OHVTF revenue (i.e., Caltrans indicates that the OHVTF formula presumes that 36% of licensed four-wheel drive vehicles are used for OHV use, but actually only 11% are). Although this is an issue statewide, and it is not limited to ODSVRA, it is indicative of the problems associated with the OHVTF, and also evidence that as much as OHV enthusiasts suggest that they are the ones paying for everything at the Park, they are actually contributing only about 30% of the fuel tax revenues that accrue via the OHVTF. The remainder, and the overwhelming majority (i.e., estimated at 70% per the Caltrans figures), is paid for by everyone who purchases fuel in California.

And this is not an inconsequential finding. According to the OHMVR Division budget for FY 2020/2021, \$53 million of the estimated \$75 million that is estimated to be added to the OHVTF in the year comes from the fuel tax formula. Put another way, over 70% of the OHVTF revenue in the year is generated by the fuel tax.<sup>189</sup> Because of the fuel tax formula issues described above, that means that about \$37 million that goes into the OHVTF from the fuel tax comes from non-OHV users (again, about 70%). Or, put another way, approximately one-half of OHV Trust Fund revenues in FY 2020/2021 can actually be attributed to non-OHV users.

The second issue with commentators' assertions is that the Fund wasn't created until 1988. Pismo State Beach and ODSVRA were purchased by the State over many decades beginning in the 1930s, and the last large land purchase was the Oso Flaco

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<sup>187</sup> See, for example, [https://ohv.parks.ca.gov/pages/1140/files/Cal-Trans-FINAL\\_OHV\\_REPOR\\_May2017.PDF](https://ohv.parks.ca.gov/pages/1140/files/Cal-Trans-FINAL_OHV_REPOR_May2017.PDF).

<sup>188</sup> See, for example, Caltrans Division of Research, Innovation and System Information's "OHV Fuel Tax Study" dated April 30, 2016 (task 2967).

<sup>189</sup> With the rest coming from SVRA entrance fees (\$3 million, or 4% of revenue), OHV registration fees (\$17 million or almost a quarter of revenues), and miscellaneous revenues (\$2 million or about 3% of revenues) (see Governor's Budget FY 2020/2021, Off-Highway Motor Vehicle Recreation Division).

area in 1984, which appears to have been purchased with State bonds for general parks purchases. Thus, it appears that ODSVRA's land acquisition hasn't even been with OHVTF monies.

Further, and recognizing that at least part of the operations and maintenance budget for the Park comes from the Fund, two things are noted. The first is because the OHV Laws require protection of natural resources when degraded by OHV use, ongoing funding to continue to manage those parks (and this Park) nonetheless would be consistent with those laws as well.

In short, while much is made by some OHV enthusiasts that the funding for this Park comes from OHV users and must only be used for OHV purposes, the discussion above suggests that that is simply incorrect. In fact, numbers from recent studies associated with the OHV Trust Fund suggest that about half of the revenues that go into that Trust Fund (and that fund Park operations here, where State Parks estimates that the Park budget is about \$12 million) *actually comes from non-OHV users via the fuel tax*. In addition, there does not appear to be a solid legal reason that would suggest that those funds could not be used to operate a Park that did not allow OHV, including as the OHV Laws themselves suggest that the OHV use needs to be curtailed when it is leading to the types of adverse environmental and other outcomes that it is at the Park as detailed in this report. In addition, recent court cases on this very point are clear that OHV monies can be used for non-OHV purposes. Given that it appears that all gas purchasers in California are contributing to the OHV Trust Fund at the same rate as OHV users, it also makes sense that the funds can be used for other than OHV purposes, including environmental remediation related to that use at a minimum.

## **E. Commission-Required CDP Changes**

### ***Framework for Decision***

To summarize key points in the preceding analysis that must be addressed through the CDP review process, perhaps the most critical is that vehicular and OHV use is not allowed in ESHA under the Coastal Act and the applicable LCPs here (see ESHA map in Exhibit 10). As a result, even if the Commission wanted to authorize continued vehicular and OHV use in ESHA, it cannot, consistent with the law. And, given the range of coastal resource degradation that these types of uses in ESHA engender, especially the OHV use, such uses are not only not allowed, but their impacts require that they be discontinued in ESHA. Thus, under the LCPs and Coastal Act, vehicular and OHV use cannot continue to be allowed in ESHA at the Park.

However, the Park *does* include non-ESHA beach areas to the north, and these areas provide a potential location for the State Parks to consider recreation that might be more intensive than general beach use. This non-ESHA beach area extends from just upcoast of Arroyo Grande Creek to West Grand Avenue. A portion of this area also fronts the community of Oceano, where any such more intensive recreational use must also take into account the community character protected by the LCP, such as a beachfront that isn't dominated by cars, as well as the need for car-free recreational area. The above analyses point to the area between West Grand and Pier Avenues (or

about one and a quarter beach miles) as a potential area for more intensive recreational uses, including the potential for street-legal vehicular uses and beach camping, both of which have been identified by many commentors as important to their continued enjoyment of the Park. This area could also provide ADA access to the beach, as this is one of the current benefits of current vehicular access at the Park, and many commentors have passionately argued for this allowance.

And the above analyses also point to the area south of Pier Avenue, which is all designated as ESHA, as an area that needs a different treatment, particularly as an area that can be reserved for non-vehicular beach uses and, further south, enhanced habitat protections. Specifically, the two-mile stretch of beach south of Pier Avenue could be protected for general beach use with the next mile set aside as a transition to habitat areas further south (i.e., open to general use outside of plover breeding season (i.e., between March and September)). The area from current Post 4 south to the end of the southern habitat enclosure can accommodate enhanced habitat protection (this area already includes the southern enclosure, and the 48-acre restoration area just north of that in the fore dunes (see Exhibit 1)). The beach area near Oso Flaco, about a mile or so, could continue to be available for more remote type of beach access. In other words, the constraints identified in the preceding sections of this report provide a guide to what the Park can accommodate consistent with the Coastal Act and LCPs.

In sum, as explained in the preceding analysis, the Park cannot continue to operate as it has in the past due to the numerous both distinct and overlapping coastal resource impacts and problems. Evidence available today demonstrates that the uses and intensities of uses temporarily authorized in the base CDP are inconsistent with the LCPs and Coastal Act, including dune and ESHA protection policies and environmental and tribal justice considerations. Through the CDP review process set up in the base CDP, the Commission must make the necessary changes that best address these coastal resource impacts as discussed previously. Ultimately, the range of issues and constraints affecting the Park together require that the Park transition away from high-intensity OHV use to other forms of public access and recreation.

And given that State Parks' draft PWP proposes even *more* OHV use than even currently occurs, this CDP review can provide guidance to State Parks on the types of projects and development that can be approved in the PWP as consistent with the LCPs. In addition, it is also clear that immediate changes are necessary to address significant habitat disruption in the short term. The Coastal Act and LCPs require the maximization of public access and recreational opportunities, but in a manner respective of the time, place, and manner of such access to ensure the protection of natural resources, and within the constraints of applicable laws and regulations. The Commission action described below is to be understood through this lens.

### ***Required CDP Changes***

First, with respect to vehicular and OHV use, the evidence demonstrates that such use is not allowed in ESHA and that it also significantly disrupts ESHA. Thus, under the LCPs and Coastal Act, the Commission is required to disallow such use in ESHA or in

areas where such use could significantly disrupt ESHA. At the same time, the Commission is sensitive to the fact that this is a large coastal park and a significant operation, and it may take some time to modify the way in which the Park operates (including related to budgeting, planning, and making the physical changes needed). Here, the Commission believes that providing State Parks a little time to work through such a transition is appropriate for other reasons as well, including to allow State Parks to work with interested parties and the community on fine-tuning the manner in which Park offerings will be provided in the future in line with the rest of this CDP action. Thus, **Special Condition 1** eliminates OHV use over a 5-year phase out period, wherein by January 1, 2026 OHV use is no longer allowed in ESHA at the Park. And beginning immediately, including to reflect the PWP's proposal on this point, **Special Condition 3** reduces OHV, camping, and street-legal vehicle use limits. The Commission expects that State Parks will take immediate actions to effect such a phase out, and is supportive of measures that can allow OHV use to be phased out earlier if State Parks believes it can be accomplished in an appropriate manner. For example, State Parks could reduce OHV use in phases to help to create appropriate user expectations and otherwise help with the transition and coastal resource protection (e.g., reducing the southern extent of the OHV boundary south by a mile each year, or eliminating/reducing riding in the La Grande property immediately (or at least first) given it has been identified as the most emissive for dust control purposes, etc.). That said, the Commission here leaves the master planning for that transition to State Parks, with support as appropriate from the Executive Director.

Second, there is the potential for more intensive recreational offerings in the north of the Park, on the flat beach area between West Grand and Pier Avenues. The Commission recognizes that vehicular beach camping is a recreational access opportunity that is revered at the Park, including as it is the only State Park in California where such vehicular beach camping is allowed. The Commission finds that such can be accommodated consistent with the LCPs and Coastal Act, given that this area does not constitute ESHA. Opening this area to beach camping will, in the short run, essentially *double* the amount of beach area that is available to such beach campers at the Park, allowing for campers to have a little more space and not be so tightly confined. Over time, vehicular and camping uses south of this area will be transitioned out similarly to the OHV use (with the same potential for phasing), until by January 1, 2026, street-legal vehicles (only) and beach camping will only be allowed between West Grand and Pier Avenues as part of the final use and use intensity configuration of the Park. Again, as with the OHV use parameters, **Special Condition 1** identifies the types of uses and intensities of uses that are consistent with the LCPs and Coastal Act and leaves the master planning for that transition to State Parks, with support as appropriate from the Executive Director.

Third, although the areas to the south of the Park are sensitive ESHA, the Commission finds that there is the potential for State Parks to accommodate a small, low-key, interpretive camping experience (including as this would constitute a resource dependent use) in this area near Post 4 (i.e., at the northernmost portion of this area). This area would only be accessed via hike-in and bike-in, allowing for a more primitive

overnight experience in an area just upcoast from the protected and access-restricted areas to the south. Similarly, the Commission believes that there is the potential for State Parks to provide other low impact and interpretive experiences in the southern part of the Park, and that the five-year transition allows them time to work through these types of opportunities too, including with the local community and other Park users. Again, the Commission defers to State Parks master planning process, but ultimately would need to review any subsequent allowed uses and intensities of use in this area under this CDP. See **Special Condition 1**.

Fourth, **Special Condition 2** requires the Pier Avenue entrance to the Park to be closed immediately and the natural dune and bluff conditions restored. The Commission is aware that during the 5-year transition period this would mean that more vehicles would enter via West Grand Avenue and need to drive between the two streets on the beach, but those numbers would also decrease over time, including subject to potential interim use reductions during the 5-year time frame as it relates to potential phasing. And after five years, vehicles on the beach would be limited to the area between West Grand and Pier Avenues.

In addition, closing down the Pier Avenue entrance immediately allows the community to begin to plan for a revitalization of its main coastal street and accessway, which over time would include a beach south of Pier Avenue without vehicles, and a beachfronting foundation for Oceano to be revitalized and directly connected to its beach. This would further the public access and recreational requirements of the LCPs and Coastal Act, and in a manner protective of coastal resources, as required. Furthermore, by opening up beach camping between West Grand and Pier Avenues, campers there will be nearer to Pismo Beach, Grover Beach, and Oceano businesses than is currently the case (i.e., near West Grand and Pier Avenues). Thus, those campers are more likely to walk to, visit, and shop, helping to offset at least some concerns that non-OHV businesses along Pier Avenue will be adversely affected.<sup>190</sup>

Fifth, and to further address habitat needs, **Special Condition 3** requires a series of ESHA protection protocols recommended by the Commission's Staff Ecologists. These include the changes previously identified by the Commission in its July 2019 CDP action. **Special Condition 3(g)** explicitly authorizes grading for normal Park operations and upkeep, including for protective fencing around habitat protection and cultural areas, but in a manner required to have the least impact on coastal resources as possible. The condition also makes clear that certain types of grading, such as beach

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<sup>190</sup> 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.



grooming, is expressly not allowed. **Special Condition 3(b)** makes the 300-acre seasonal plover enclosure permanent and year-round, as previously identified by the Commission in July 2019; also extends seasonal habitat fencing to encompass additional habitat-rich areas another mile or so north of the enclosure;<sup>191</sup> and incorporates USFWS and CDFW-recommended fencing around individual plover and tern nests regardless of location. **Special Condition 3(h)** requires State Parks to immediately enclose trash containers, and doing so in a manner to address predation issues on sensitive species. During the 5-year transition period where OHV use is still allowable, **Special Condition 3(e)** prohibits vehicular crossing of Arroyo Grande Creek when it is flowing to the ocean, and **Special Condition 3(d)** prohibits vehicular use at night. And finally, **Special Condition 3(c)** allows dune restoration in any areas needed to address issues of overuse and/or habitat protection/enhancement, including in terms of permanent dust control remediation needs.

Sixth, additional conditions describe the public access and recreational offerings to be provided. First, **Special Condition 1(d)** makes clear that, outside of the above described areas designated and fenced for habitat and cultural resource protection, free general public access and recreation (e.g., for low-intensity hiking, birdwatching, and beachgoing) is allowable, including equestrian use outside of the vehicular/camping zone (to avoid user conflicts) along designated trails and in other areas where general public access is accommodated.

Finally, a series of conditions are included to ensure activities at the Park remain in compliance with the LCPs and Coastal Act. **Special Condition 4** eliminates the TRT and replaces it with a Monitoring Program. Under the Program, each year State Parks will prepare a monitoring report and submit it to the Executive Director, where it will document State Parks efforts towards compliance with terms and conditions of the CDP as a means to provide relevant updates, but also to provide State Parks with some management flexibility and some space within which to address the changes identified herein through their processes without a required annual CDP review/renewal. **Special Condition 3(i)** makes clear that music festivals, concerts, and other special events require separate CDP authorization, unless the Executive Director determines that no such CDP authorization is legally required. Also, **Special Condition 3(j)** requires implementation of enhanced outreach to help maximize use of the Park by lower-income, youth, and tribal parties, including those in inland communities that might not normally be reached through traditional and local means.

## F. Conclusion

As the Commission found when it last reviewed the CDP in July 2019, the status quo related to uses and intensities of uses occurring at the Park is clearly not consistent with the protection of ESHA and other coastal resources. Given what is known about the impacts of existing uses at the Park, particularly as science has clarified the significant

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<sup>191</sup> The condition extends protective fencing around the area mapped as “Primary Habitat” pursuant to the proposed draft PWP and HCP, where 99% of all plover and tern nests were found between the years 2005-2018.

adverse impacts of these uses and intensities of uses, it is time to implement other public access and recreation options that better respond to the current realities that affect and are affected by activities at this shoreline location. Put simply, a Park that is fully consistent with CDP, Coastal Act, and LCP requirements, cannot include OHV use. Rather, it is clear that the coastal resource issues and constraints warrant elimination of OHV use in ESHA at the Park, and replacement with new and revised recreational offerings and habitat protection protocols. The above CDP changes represent an extension of the Commission's analysis from 2019 brought to its conclusion. And in light of State Parks draft PWP that only minimally addresses the Commission's 2019 direction, and in fact is premised on expanding OHV uses and intensities of use at the Park, it is clear that such Commission direction on the requirements of the applicable LCPs and Coastal Act is required.

To be clear, however, while it is true that OHV uses would not ultimately be allowed at the Park after five years, and there are those to whom that means the Commission is here 'closing' the Park, the Commission is providing for the opportunity for a revised and reimagined Park that is very much open, but to uses and intensities of uses that are LCP and Coastal Act consistent. In fact, the Park extends along 8 miles of beach and shoreline, and includes an incredible and dynamic natural sand dune system that extends some 2 miles inland, for a total of 4,750 Park acres (for comparison, the Park is almost five times the size of Golden Gate Park in San Francisco). In other words, this is a very significant public asset, and the Commission's action would not have the effect of closing it. Rather, the Park will be significant for what it *can* provide, and not for what it can't.

The Commission hopes to partner with State Parks, the local community, the tribes, and visitors to the area to reimagine the Park in sustainable, and legally consistent ways, and sees the potential for the Park to become one of State Parks' crown jewels, offering unique experiences (e.g., car camping on the beach, hike-in/bike-in camping on the beach, etc.) and a range of access options (from typical active beach use to equestrian uses to more remote beach and lake experiences to birding and dune hiking/camping) while also protecting sensitive species and the natural environment in a manner that is consistent with the LCPs and Coastal Act. The Commission believes that a Park reimagined in this way will be an environmental and biodiversity foundation<sup>192</sup> for the area, and an anchor for economic vitality. In fact, it is not hard to imagine a new Park experience that is itself a visitor draw, particularly for families looking for unique lower cost recreational and outdoor opportunities in the five cities area. In addition, and critically, the new Park vision allows the dunes to heal, and to better protect community air quality and public health, all of which are also essential benefits from the envisioned changes.

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<sup>192</sup> Including furthering the Governor's biodiversity goals specified in the October 2020 California Biodiversity Collaborative in Executive Order N-82-20: "To support the global effort to combat the biodiversity and climate crises, it is the goal of the State to conserve at least 30 percent of California's land and coastal waters by 2030." <https://www.gov.ca.gov/wp-content/uploads/2020/10/10.07.2020-EO-N-82-20-.pdf>.

And finally, the Commission recognizes that there are many passionate and fervent advocates on all sides of the issues at the Park, and appreciates all that they have contributed to the debate over the nearly four decades of contention on the CDP. And further recognizes that there will be many that do not believe this to be the right decision for the Park, on all sides. 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. And to be clear, these issues and questions have lingered for decades, including as potential solutions were identified that never materialized, and the Commission cannot continue to push resolution of these issues out into the future at the expense of the environmentally sensitive resources at the Park. In rendering this decision, the Commission is hopeful that it can provide the type of finality that is needed here – good planning and public policy demand no less at this juncture – and that the Park continues to be a celebrated public asset, and a dynamic and unique coastal Park for the five cities area and visitors to it for many, many years to come.

## Appendix A: Substantive File Documents

- CDP 4-82-300, as amended
- CDP 3-12-050, as amended
- San Luis Obispo County LCP
- City of Grover Beach LCP
- State Parks Draft PWP
- State Parks Draft PWP Supporting Documents: Existing Conditions
- State Parks Draft PWP Supporting Documents: CDFW Biodiversity Plan
- State Parks Draft PWP Supporting Documents: Draft EIR for Draft PWP
- State Parks Draft PWP Supporting Documents: Draft HCP
- State Parks Draft PWP Supporting Documents: Draft EIR for Draft HCP
- State Parks Draft PWP Supporting Documents: Draft EA for Draft HCP
- Commission Staff 2007 Comments regarding the La Grande Property
- Commission Staff 2018 Comments regarding the PWP (NOP)
- Commission Staff 2020 Comments regarding the HCP (NOP, DHCP, DEIR, and DEA)
- 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

## Appendix B: Staff Contact with Other Agencies and Groups

- California Department of Parks and Recreation (Statewide, Oceano District, and Off-Highway Motor Vehicle Recreation Division)
- California Natural Resources Agency
- California Air Resources Board
- California Department of Fish and Wildlife
- San Luis Obispo County Department of Planning and Building
- San Luis Obispo County Oceano Advisory Council
- City of Pismo Beach
- City of Grover Beach
- City of Arroyo Grande
- City of Guadalupe
- San Luis Obispo County Air Pollution Control District

## Oceano Dunes CDP Review

- Santa Barbara County Air Pollution Control District
- United States Fish and Wildlife Service
- NOAA Fisheries
- Northern Chumash Tribal Council
- Yak Tityu Tityu Northern Chumash Tribe
- Friends of Oceano Dunes
- Center for Biological Diversity
- Concerned Citizens for Clean Air
- Oceano Beach Community Association
- Dunes Alliance
- Sierra Club
- South County Chamber of Commerce
- Central Coast Alliance United for a Sustainable Economy (CAUSE)