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STAFF REPORT CDP AMENDMENT

Application Number: 3-12-050-A2

Applicant: California Department of Parks and Recreation

Project Location: Various locations within Oceano Dunes in southern San Luis Obispo County.

Originally Approved Project: Implement multiple dust control projects as part of a five-year effort intended to help reduce dust emissions through multiple methods, including through dune restoration.

Proposed Amendment: Implement an additional 93 acres of permanent dust control mitigation via dune restoration (with 66 acres inside the off-highway vehicle riding and camping area and 27 acres outside of it).

Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

The California Department of Parks and Recreation operates a large roughly 5,000-acre State Park in southern San Luis Obispo County, typically referred to as Oceano Dunes (or Park). The Park includes thousands of acres dedicated to various public recreational access activities (including off-highway vehicle (OHV) use, street-legal vehicle use, camping, and day-use beachgoing) with essentially all of it deemed as an environmentally sensitive habitat area (ESHA), including in the San Luis Obispo County Local Coastal Program (LCP). The Park operates under a coastal development permit (CDP) that was initially approved by the Commission in 1982 (CDP 4-82-300) and last modified in March 2021. That CDP specifies allowable public recreational access uses and intensities, as well as resource protection requirements. State Parks also implements dust abatement measures at the Park that are the subject of a different

CDP, CDP 3-12-050, and that CDP is the subject of this CDP amendment application whereby State Parks proposes to amend it to allow for permanent dust control mitigation to be applied to an additional 93 dune acres,¹ with 66 of those acres to be located inside the active off-highway vehicle riding and camping area and 27 acres to be located outside of it.

By way of background, on September 14, 2017, the Commission originally approved CDP 3-12-050, which authorized State Parks to implement a series of measures aimed at controlling and minimizing particulate matter (or “dust”) emissions associated with the Park,² where subsequent potential proposed measures would be subject to further Commission authorization at a future time. Such emissions have been, and are currently, impairing air quality in downwind communities, including exceeding state and federal particulate matter emission standards in some cases. State Parks’ dust control efforts are meant to implement measures designed to comply with San Luis Obispo County Air Pollution Control District (APCD) air quality requirements, including APCD Rule 1001, which was adopted by APCD in 2011 and requires State Parks to minimize particulate matter emissions from Oceano Dunes. These measures are mostly aimed at stabilizing dune structure and restoring dune surface and vegetation properties in a manner that can help reduce potential dust emissions. The CDP has been amended once, and to date allows State Parks to retire 156.2 acres of dune ESHA from vehicular, OHV, camping, and other non-habitat uses, including by fencing off and restoring these areas with native dune vegetation (i.e., permanent dust control mitigation); to annually deploy up to 40 acres of seasonal dust control measures (e.g., wind fencing) during the windy season (i.e., roughly from March to September each year) within the OHV riding and camping area; and to install and operate monitoring equipment to evaluate dust abatement effectiveness. Because State Parks has exhausted the 156.2 acres allowed for permanent dust control mitigation by CDP 3-12-050 as amended, any additional such mitigation, such as what is proposed in this application, requires additional CDP authorization.

The Coastal Act states that air quality protection programs are the principal responsibility of local air pollution control districts (APCD in this case) and the California Air Resources Board (CARB), and requires the Commission to ensure that new development is consistent with these entities’ air pollution control programs and requirements.³ That said, while the Act states that the Commission cannot establish or modify air quality or emission standards, the Commission must still review development

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

² The Commission initially approved the CDP on September 14, 2017, and the Commission was sued over its approval by the Friends of Oceano Dunes. In January 2020, the San Luis Obispo County Superior Court remanded the project back to the Commission for additional review of the project’s coastal resource impacts, and the Commission approved the remanded CDP application on July 9, 2020. On that same day, the Commission approved CDP 3-12-050-A1, which amended the CDP by allowing for an additional 52.2 acres of permanent dust mitigation/dune restoration.

³ Coastal Act Sections 30414 and 30253(c).

required to implement air pollution control programs and requirements to ensure that such development is consistent with Coastal Act requirements, including the protection of ESHA, public recreational access, and other coastal resources. In other words, there is no 'override' of these other Coastal Act requirements on the basis of air quality protection, and the Commission must still evaluate such proposed development for consistency with the Coastal Act.

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

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

At the same time, similar to the originally approved CDP, the proposed additional dust abatement and restoration areas will lead to a decrease of some 66 acres currently used for OHV use and other forms of public recreation. Staff believes allowing for dust control in this area is appropriate and Coastal Act consistent because these areas are being removed from that public recreational use due to problems emanating from the use itself. In such cases, the Act is clear that its requirements for providing maximum public recreational access opportunities must be tempered with the need to "protect ... natural resource areas from overuse", and explicitly requires that its public access provisions "be implemented in a manner that takes into account the need to regulate the time, place and manner of public access" depending on, among other things, "the capacity of the site to sustain use and at what level of intensity," and the need to potentially limit access "depending on such factors as the fragility of the natural resources in the area" and for "the protection of fragile coastal resources."⁴

In this case, it is appropriate to implement the proposed dust control measures at the dunes in question to stabilize their structure, restore their surface and vegetation properties, and address the problems emanating from such use, namely "requirements

⁴ Coastal Act Sections 30210, 30212, and 30214.

imposed by an air pollution control district”, here the APCD.⁵ In addition, all of the proposed restoration is taking place in dune ESHA, and eliminating non-resource-dependent vehicular uses in ESHA (i.e., something the Coastal Act doesn’t allow in these dune ESHA areas) and restoring these areas as protected dune habitat (i.e., something the Coastal Act fundamentally requires and supports in these dune ESHA areas) is inherently and clearly consistent with the Coastal Act. And indeed, all of these issues led the Commission to discontinue OHV, vehicular recreation, and camping uses in ESHA in three years (by January 1, 2024) pursuant to the recent changes to CDP 4-82-300 enacted by the Commission on March 18, 2021, including in the areas affected by this proposed amendment. In short, the proposed changes are consistent with the Coastal Act’s public recreational access provisions that require unsustainable uses and use intensities to be restricted when they lead to resource and other problems. Here, those are air quality problems and APCD requirements.

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

In conclusion, the proposed CDP amendment addresses a known and significant public health and air quality problem associated with the Park. Staff believes that the amended dust control project is consistent with the Coastal Act, and recommends that the Commission approve the CDP amendment. The motion to do so is found on page 6 below.

⁵ Coastal Act Sections 30214 and 30253(c).

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EXHIBITS

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

1. MOTION AND RESOLUTION

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

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

Resolution to the Approve CDP Amendment: *The Commission hereby approves Coastal Development Permit Amendment Number 3-12-050-A2 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

2. STANDARD CONDITIONS⁶

This permit is granted subject to the following standard conditions:

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

⁶ The standard conditions remain unchanged with this amendment.

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

3. SPECIAL CONDITIONS⁷

This permit is granted subject to the following special conditions:

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

- (a) Permanent Dust Control Measures.** Approved permanent dust control measures are limited to permanently discontinuing vehicular, OHV, camping and other non-habitat uses within ~~156.2~~ 222.2 acres of the vehicular, OHV, and camping areas at ~~ODSVRA~~ the Park, fencing off these areas to protect them, and planting native dune vegetation within the fenced off areas. Approved measures also allow permanent restoration with native dune vegetation of 27 acres of dune areas outside of the vehicular, OHV, and camping use areas. See Exhibit 2 for demarcation of these authorized areas.
- (b) Seasonal Dust Control Measures.** Approved seasonal dust control measures are limited to temporarily installing wind fencing, porous roughness elements, soil stabilizers and straw bales, and/or perimeter fencing (around emissive ‘hot spots’) within up to 40 acres of the vehicular, OHV, and camping areas at ~~ODSVRA~~ the Park at any one time, generally during the windy season (generally between March through September) each year. Soil stabilizers and/or straw bales shall only be used if the Executive Director determines that the proposed soil stabilizers and/or straw bales can be installed in an amount, configuration, and composition that will not significantly disrupt dune habitat values (i.e., in this case meaning that there is no significant degradation of dune habitats and/or vegetation, and the use is kept to the minimum amount necessary to abate dust).
- (c) Other Dust Control Measures.** Other approved dust control measures are limited to installing ‘track out’ devices within the existing pavement areas (and not on beach sand) at the Pier Avenue and West Grand Avenue entrances to ~~ODSVRA~~ the Park, and installing native trees inland of ~~ODSVRA~~ the Park provided such native trees shall only be planted where the State Parks has provided property owner consent for same, and where the Executive Director

⁷ Note: changes made to the special conditions as part of this amendment are shown in ~~strike through~~ and underline formats to note ~~deletions~~ and additions to the special conditions of CDP 3-12-050 through and including amendment 3-12-050-A2.

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

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

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

- 2. Dust Control Work Plan.** Prior to implementing any of the Approved Project elements, the Permittee shall submit, for Executive Director review and approval, two copies of a Dust Control Work Plan that clearly describes the specific dust control and monitoring measures to be implemented pursuant to it. The Dust Control Work Plan shall be submitted with evidence that APCD ~~and CARB have~~ has reviewed the measures and consider them consistent with their requirements related to dust control at ~~ODSVRA the Park~~. Each Dust Control Work Plan shall include a description of previously deployed measures, including monitoring data identifying effectiveness (including the effectiveness and success of dune revegetation) and any coastal resource impacts. The Executive Director has already reviewed and approved the specific dust control and monitoring measures to be implemented under CDP 3-12-050-A2, along with evidence from APCD that the measures are consistent with their requirements, and thus a Dust Control Work Plan is not required for those such measures.
- 3. Duration of Authorization.** This CDP authorizes the Approved Project for five years (i.e., until September 14, 2022). The Executive Director may extend the expiration date by additional five-year periods if the Permittee submits a written request to do

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

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

4. FINDINGS AND DECLARATIONS

A. Project Location

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

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

has been identified as the largest such intact coastal dune ecosystem in the world,⁸ and is a federally designated National Landmark. The City of Grover Beach forms the northern border of the Park. Inland and to the east are the Phillips 66 Refinery (formerly ConocoPhillips Refinery), the unincorporated community of Oceano, and private lands that consist mainly of dunes, coastal scrub, and agricultural fields. The southern border of the Park abuts the Guadalupe-Nipomo Dunes National Wildlife Refuge.

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

B. CDP 4-82-300 Background

Under the Coastal Act, the Park operates under a CDP first issued by the Coastal Commission in 1982 (CDP 4-82-300). That CDP identifies the basic parameters for Park operation, including where and what type of public recreational access is allowed (e.g., OHV riding, camping, street-legal vehicle use, day-use beachgoing activities, etc.), the maximum daily number of allowed OHV/street-legal vehicles and camping units, and requirements for habitat and sensitive species protection. That CDP has a long history, and was last modified on March 18, 2021, where the Commission acted to modify the CDP with respect to allowed uses and intensities of uses at Oceano Dunes by, among other things, requiring that OHV use, and all vehicular recreational use in ESHA, be discontinued within three years (i.e., by January 1, 2024), allowing for new camping areas to be opened on the beach between West Grand Avenue and Pier Avenue, and requiring enhanced habitat protection protocols. These changes were to address Coastal Act and LCP conformance issues, including in relation to ESHA and environmental and tribal justice.

C. Dust Control Project History

Oceano Dunes Dust

APCD, working with CARB, has found that dust emissions associated with operations at the Park have resulted in, and continue to result in, air quality problems inland of the Park, leading to exceedances of state and federal ambient air quality standards for

⁸ Including by the Nature Conservancy, see: <https://www.nature.org/en-us/get-involved/how-to-help/places-we-protect/guadalupe-nipomo-dunes/>.

particulate matter equal to or less than 10 and 2.5 microns in size (known as PM10 and PM2.5, respectively). The high particulate matter concentrations have resulted in what the APCD has deemed a “significant and ongoing public health threat” for the people living, working, visiting, or otherwise present inland of the Park, including particularly in the Nipomo Mesa area, but also extending into Santa Barbara County to the Cities of Guadalupe and Santa Maria as well as the Santa Maria Valley more broadly.⁹ Federal and state air quality standards have been exceeded at APCD’s downwind monitoring stations. Indeed, on certain days of the year, this area has the highest particulate matter concentrations and worst air quality in all of the United States.¹⁰

Two APCD studies¹¹ have concluded that OHV activity is a major contributing factor to the high particulate matter levels recorded inland of the Park, including on the Nipomo Mesa and the further inland locations described above, and that the primary emissions causes are direct as well as indirect impacts associated with OHV use. These studies show that indirect OHV-related emission impacts stem from de-vegetation, dune structure destabilization, and destruction of the natural dune surface caused by OHV use, which increase the ability of the wind to entrain sand particles from the dunes. The studies also found that direct OHV-related emission impacts, meaning those impacts associated with fuel combustion exhaust or dust raised by vehicles moving over the sand, are a lesser, but not insignificant, contributors to the elevated PM10 levels. Based on the conclusions reached in the studies, and to address these air quality impacts, APCD adopted Rule 1001 in 2011.

APCD Rule 1001

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

CDP 3-12-050

The dust control measures authorized in CDP 3-12-050 were generally aimed at

⁹ And the Santa Barbara County Air Pollution Control District is also very concerned about such emissions as they affect areas subject to their authorities in Santa Barbara County.

¹⁰ Including most recently on February 27, 2021 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 website).

¹¹ 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.

stabilizing dune structure and restoring dune surface and vegetation properties in a manner that can help to reduce potential dust emissions. The CDP, which has been amended once before, allows State Parks to retire up to 156.2 acres 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 efforts are meant to be adaptive, acknowledging that the actual measures to be employed on the ground over time would be developed in conjunction with APCD and CARB, including to meet Rule 1001 compliance and objectives. And any such measures coming out of that adaptive effort that are not covered by the parameters of the CDP, as described above, require their own authorization. Such is the nature of this proposed CDP amendment.

APCD/State Parks Stipulated Order of Abatement

More recently, and based on APCD assessments that State Parks' efforts to date were not resulting in adequate dust reduction and air quality improvements, State Parks and APCD entered into a Stipulated Order of Abatement (SOA) (in 2018, as modified in 2019) to identify and implement additional measures needed to better reduce dust related to vehicular activity at the Park. The SOA also included the formation of a Scientific Advisory Group (SAG) to provide advice to State Parks and APCD on all technical air quality matters and recommendations related to the SOA, and to help in achieving Rule 1001 compliance. The SOA specified new dust reduction requirements that State Parks must meet within the four-year period between 2019 to 2023.¹² 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. To meet these requirements, current APCD and State Parks air quality modeling suggests that between 500 and 800 acres (or between one-third to over one-half of the pre-dust control OHV riding area of roughly 1,500 acres), may need to be permanently closed off to OHV/camping activity and revegetated in order to get close to, but still not meet, the requirements of the SOA.

D. Standard of review

The project area for the CDP spans multiple CDP jurisdictions, including those of the City of Grover Beach, San Luis Obispo County, and the Coastal Commission. Each entity agreed to consolidated CDP processing under Coastal Act Section 30601.3, and

¹² And subject to potential extension past 2023 if necessary to achieve required dust reduction and related air quality improvement.

thus the standard of review for the CDP and any amendments to it is the Coastal Act, with local LCPs providing non-binding guidance.

E. Project Description

In conformance with Rule 1001 and the SOA, State Parks proposes to amend CDP 3-12-050 to allow for an additional 93 acres within which to apply permanent dust control mitigation.¹³ The restoration would be undertaken in 12 distinct areas, with 66 acres inside the current OHV riding and camping area and 27 acres outside of it. For the areas within the riding area, State Parks proposes to install perimeter fencing to delineate that it is off-limits to public recreational use, and then to either immediately plant native dune plants, or to apply interim measures (i.e., applying broken up straw to serve as ground cover for future plantings and/or wind fencing to retain sand) until adequate native dune plants are available to complete the restoration (which would occur no later than April 2023). For the 27 acres outside of the riding area, State Parks proposes to immediately plant native dune plants without any perimeter fencing. See **Exhibit 2** for a map that identifies the location and treatments proposed for each specific area.

F. CDP Amendment Determination

1. Dust Emissions and Dune Habitat

Applicable Provisions

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

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

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

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

¹³ Because the base CDP has authorized 156.2 acres of such permanent dust control mitigation, the amended CDP would therefore authorize a total of almost 250 acres of such mitigation (222.2 acres in the OHV riding and camping area and 27 acres outside of it).

ambient air quality standard, any emission standard, any air pollution control program or facility shall be inoperative. (c) The State Air Resources Board and any air pollution control district may recommend ways in which actions of the commission or any local government can complement or assist in the implementation of established air quality programs.

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

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

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

Air Quality Requirements

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

ESHA Requirements

The next analytic question is whether the proposed amendment is consistent with other Coastal Act requirements. Coastal Act Section 30240 protects ESHA and prohibits non-resource-dependent uses in such areas. All of the dune areas of the Park constitute ESHA under the Coastal Act and the LCP, as discussed earlier. This is in part due to

the dunes being part of a significant and sensitive ecological system, the Nipomo-Guadalupe dunes complex, much of which has been preserved exclusively for habitat protection purposes (see the Commission's Staff Ecologist memorandum articulating Oceano Dunes' ESHA designation from the March 18, 2021 CDP 4-82-300 review in Exhibit 3).¹⁴ Thus, the project must constitute a use that is dependent on the habitat resource itself to function, also called out as a "resource-dependent use",¹⁵ such as habitat restoration, to be consistent with Section 30240.

Similar to the analysis for the initial dust control mitigations authorized under the CDP, the proposed amendment at its core seeks to stabilize dunes and their surfaces via vegetative plantings to reduce emissions. Thus, although the objective is air quality related, the proposed measures are themselves designed to better protect and preserve dune features, including via dune restoration, by stabilizing dune structure and restoring dune surface and vegetative properties. When the sand is left undisturbed, a combination of salt spray and particle sorting makes the sand surface more cohesive and less prone to wind erosion. Vegetation accustomed to the dune environment can also grow, particularly when supported by active revegetation efforts, and both the increased cohesion and the vegetation have been shown to significantly reduce dune emissivity. The proposed dust control measures prevent disturbance of sand dunes, help keep sand on-site, and restore habitat, with the overall effect of restoring the natural surface and vegetative properties of the sand dunes and reducing their emissivity. This will occur immediately in the 27 acres outside the active OHV riding and camping area, as this area would be planted shortly after approval. For the 66 acres inside the OHV riding and camping area, State Parks indicates that it may take a little longer, but no more than two years, until native dune replanting can commence, due to funding and availability of plants. In the interim, State Parks intends to commence the restoration immediately via fencing these areas from use and applying interim measures (whether mulching to facilitate the future planting and/or wind fencing to help retain the sands in place to foster the future planting), which can be understood as part of the overall habitat restoration project, albeit over a longer length of time. Thus, the proposed development constitutes dune habitat restoration, and is therefore an allowable use within dune ESHA under Section 30240, meeting the first Section 30240 test.

¹⁴ As discussed in the ESHA memorandum: "Intact coastal dune ecosystems are extremely rare. Oceano Dunes is a component of one of the largest intact coastal dune ecosystems in the world and contains many rare habitats that support a great diversity of plants and animals, many of which are also rare. That is why Oceano Dunes is so unique and special, and a fundamental reason explaining why it is protected under the Coastal Act and the LCPs as ESHA. Experience tells us that maintaining, through conservation, intact natural processes and unfragmented ecosystems is orders of magnitude easier than restoring such ecosystems. At Oceano Dunes there is the opportunity to maintain, restore, and conserve this ecologically sensitive and biodiverse place now. If disruptive activities cease, this ecosystem will require only modest remediation and management. Oceano Dunes is a significant ESHA on the California coast that warrants the protection afforded to it under the Coastal Act and the LCPs."

¹⁵ The Commission has generally interpreted "resource-dependent use" to mean habitat restoration, nature/scientific study, and low-intensity interpretive public access and recreation pursuits (e.g., hiking trails and pathways).

The next requirement for Section 30240 consistency is that the allowable development (in this case habitat restoration through revegetation) must be undertaken in a manner that will not significantly disrupt dune ESHA habitat values. The proposed measures are mostly located in areas that are disturbed dune ESHA currently used for vehicular, OHV, camping, and other non-habitat purposes (i.e., 66 of the 93 acres, or 71%). Such measures will not only prevent the dunes from being further *disrupted* in these areas, but the dunes will also be *restored* with native dune vegetation consistent with project area native species. As to the 27 acres proposed to be restored outside the OHV riding and camping area (i.e., in an area of dune ESHA that is currently off-limits to such activities), this natural area was chosen because it requires some restoration assistance to facilitate dune cohesion and vegetation within the larger habitat, and the proposed active native dune plant revegetation effort there should help that area to better function as part of the overall habitat mosaic at the Park. As a result and overall, the project should lead to an increase in dune habitat value, enhancing the dune habitat resource as compared to the current condition, which does not significantly disrupt the habitat resource (rather it enhances it). As such, the proposed revegetation is consistent with the requirement to not significantly disrupt dune habitat.¹⁶ Thus, the proposed development will not significantly disrupt ESHA habitat values, and meets the second Section 30240 test.

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

Conclusion

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

¹⁶ In addition, none of the proposed restoration/revegetation is proposed within the foredunes or USFWS-designated critical habitat for western snowy plover. Some of State Parks' prior project proposals similar to this under this CDP, that resulted in areas being removed from OHV riding and camping and restored/revegetated, were located closer to, or in, these foredune and critical habitat areas. And in those cases, some claimed that the revegetation itself would lead to adverse impacts on dune habitats and species, and particularly on snowy plover, based on an allegation that the newly vegetated areas would better harbor predators and facilitate snowy plover predation. However, the Commission found at that time that the significance of this supposition was exaggerated for a variety of reasons, including in reliance on Commission Staff Ecologist Dr. Laurie Koteen's findings that the increased risk is small (including because bird species will not nest in or near areas they perceive to be dangerous to their chicks), that much of the remaining predation danger can be mitigated by State Parks' predator management protocols, and that the risk of adverse impacts to special-status species from dune vegetation is not significant in comparison to other impacts which threaten those species (i.e., street-legal vehicle and OHV use). And here, the proposed project treatment areas are well inland, and generally at the inland end of existing vegetated areas, where this claim is even more meritless. Thus, suggestions that the proposed project will lead to adverse impacts to listed species due to its potential to increase and facilitate predation on such species are unfounded.

fundamentally requires and supports in these dune ESHA areas) is inherently and clearly consistent with the Coastal Act. The proposed amendment, as conditioned, is consistent with Coastal Act Sections 30253(c) and 30240.

2. Public Access and Recreation

Applicable Provisions

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

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

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

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

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

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

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

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

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

While a fundamental tenet of the Coastal Act is to protect and provide for maximum public access and recreational opportunities along the coast (e.g., Sections 30210, 30211, 30221, and 30223), the Act also recognizes that this access must be provided in manner that protects other coastal resources. For example, Section 30210 requires maximization of public access consistent with public safety needs and the need to protect natural resource areas from overuse. Section 30212(a) requires that public access be provided except where it is inconsistent with public safety and the protection of fragile coastal resources. And finally, Section 30214 explicitly requires that the Coastal Act's public access provisions "be implemented in a manner that takes into account the need to regulate the time, place and manner of public access" depending on, among other things, "the capacity of the site to sustain use and at what level of intensity," and the need to potentially limit access "depending on such factors as the fragility of the natural resources in the area."

Analysis

Most of the area proposed for permanent dust abatement measures in this amendment request (66 acres, or 71% of the current proposed treatment area) is located in areas currently available and used for public recreational access opportunities. This area is used predominantly for OHV riding (and camping, albeit limited), but it is also available for low-intensity pursuits such as day-use hiking and birdwatching, albeit these too are pursued on a more limited basis given certain basic incompatibilities between such passive uses and more intensive vehicular recreation uses. State Parks and APCD indicate that these treatment areas were chosen in large part because they have been identified to date by APCD modelling as the areas that are the most emissive for dust, and thus that implementation of dust control measures here are expected to be most effective at reducing dust and enhancing air quality. If the proposed amendment project were to be implemented, these recreational areas would no longer be available for these recreational purposes, but rather would be permanently restored and put off limits to such uses. In other words, the proposed amendment project would decrease recreational access at the Park, and decrease available area for same by some 66 acres.

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

resources in the area” and for “the protection of fragile coastal resources.”¹⁷

Here, the Commission has found that OHV and vehicular recreation is degrading the dune resources on which it occurs, such as the 66 acres in question here (see, for example, the Commission’s March 18, 2021 action on CDP 4-82-300), and that these resources cannot handle that level of use and use intensity and still retain their inherent habitat values. In fact, OHV use and activity has been identified as one of the most destructive and disruptive activities that can take place in such dune and beach areas.¹⁸ Based on these facts, it is appropriate to discontinue this recreational use in such areas, including to maintain conformance with Coastal Act public recreational access (and ESHA) provisions (as the Commission did in relation to such vehicular and OHV uses in beach and dune ESHA at the Park under CDP 4-82-300 on March 18, 2021). And while some have and may continue to argue that this is not consistent with the Coastal Act protections afforded public recreational access, that is incorrect, as the Coastal Act requires that recreational access be compatible with the protection of natural resources.

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

It should also be noted that while the amendment here proposes permanent dust control and dune revegetation/restoration on 93 acres of dune (again, 66 acres in the OHV riding area and 27 acres outside of it), as mentioned previously, APCD (and the SAG) indicate that more acreage is likely to be needed to meet applicable air quality requirements, perhaps several hundred more acres. It is therefore foreseeable that State Parks is likely to pursue additional dust control measures in the future, potentially subject to another CDP amendment application if they involve more permanent dust

¹⁷ Coastal Act Sections 30210, 30212, and 30214.

¹⁸ See, for example, Schlacher, T.A., L. Thompson, and S. Price: Vehicles versus Conservation of Invertebrates on Sandy Beaches: Mortalities Inflicted by Off-Road Vehicles on Ghost Crabs, in *Marine Ecology* (V.28; 354-367; 2007); and Defeo, O., A. McLachlan, D.S. Schoeman, T.A. Schlacher, J. Dugan, A. Jones, M. Lastra, and F. Scapini: Threats to Sandy Beach Ecosystems: A Review, in *Estuarine, Coastal, and Shelf Science* (V.81; 1-12; 2009), as well as past Commission Staff Ecologist memorandums on this subject, including for the March 18, 2021 CDP 4-82-300 review (see Exhibit 3).

control and dune revegetation/restoration.¹⁹ However, APCD and State Parks have specifically intended the dust control measures to be developed as part of an adaptive management process in which they assess, with the help of the SAG and the use of the most up-to-date air quality science and modeling, the source of significant emissions and how best to address them. At this time, APCD and State Parks thus do not know what those future measures would consist of, where they would be located, and how many acres would be affected. Accordingly, the Commission is unable to assess such an uncertain future potential project(s) at this time, but it retains its authority to address Coastal Act consistency of any future dust control measures at the time that they are presented to it, regardless of the decision it makes on the dust control measures before it today. In sum, the Commission's analysis of proposed future dust control measures is not prejudiced by its review of such measures today.²⁰

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

3. Environmental Justice

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

Section 30107.3. (a) "Environmental justice" means the fair treatment and meaningful involvement of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies. (b) "Environmental justice" includes, but is not limited to, all of the following: (1) The availability of a healthy environment for all people. (2) The deterrence, reduction, and elimination of pollution burdens for

¹⁹ Here it is noted that CDP 4-82-300, as modified on March 18, 2021, is also structured to help facilitate such future dust control measures, provided that such measures constitute dune restoration. Specifically, Special Condition 3(c) of that CDP states: "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." The Commission intended that State Parks could thus undertake dune restoration activities at the Park and they would be authorized under that CDP, and thus State Parks would not need additional authorization under this CDP or amendments thereto, including for streamlining purposes for important air quality and public health objectives. In this case, however, the proposed measures are being processed under an amendment to the dust control CDP for numerous reasons, including because State Parks' initial application was submitted before CDP 4-82-300 was modified to allow for this type of restoration, and also because the CDP amendment application initially included some provisions that weren't necessarily associated with dune restoration (e.g., placement of straw bales and soil stabilizers that are not covered under CDP 4-82-300) and that raised coastal resource concerns. As such, both Commission and State Parks' staff agreed to process this current proposed dust control work as an amendment to the dust control CDP. But, in the future, dune restoration for permanent dust control purposes can be covered under CDP 4-82-300.

²⁰ It should also be noted that the Commission's approval here limits State Parks' permanent dust control efforts in total under the CDP as amended to 222.2 acres in the OHV/camping area and 27 acres outside of it, per Special Condition 1(a). That condition is a limit, and any measures in exceedance would require additional authorization. In addition, some have argued that Special Condition 1(f) includes language that overrides Special Condition 1(a)'s acreage limit. That is not the intent, and changes to Special Condition 1(f) here are meant to dispel any potential ambiguity on the issue.

populations and communities experiencing the adverse effects of that pollution, so that the effects of the pollution are not disproportionately borne by those populations and communities. (3) Governmental entities engaging and providing technical assistance to populations and communities most impacted by pollution to promote their meaningful participation in all phases of the environmental and land use decision making process. (4) At a minimum, the meaningful consideration of recommendations from populations and communities most impacted by pollution into environmental and land use decisions.

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

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

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

Thus, the Commission’s EJ Policy underscores the importance of both substance (i.e., evaluating whether projects do or do not disproportionately distribute environmental benefits and burdens) and process (i.e., ensuring that those potentially affected by proposed development have an equitable opportunity to participate in a transparent public process).²¹

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

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

²¹ Commission staff has been engaged with many groups over the years that raise and seek resolution to environmental justice issues at the Park, including Concerned Citizens for Clean Air, the Oceano Beach Community Association, the Dunes Alliance, and Central Coast Alliance United for a Sustainable Economy, or CAUSE, a prominent environmental justice organization focused on the Central Coast.

communities which reduce the positive health and recreational benefits associated with coastal access and coastal resources for pollution-burdened communities.

As described earlier, vehicular and OHV use at the Park has led to adverse air quality that disproportionately impacts the residents of adjacent downwind communities of Oceano and Nipomo in San Luis Obispo County,²² as well the Cities of Guadalupe and Santa Maria (and the Santa Maria Valley more broadly) in northern Santa Barbara County as well.²³ These underserved communities bear the brunt of the burden of Park use, including with respect to adverse air quality, thereby raising prototypical environmental justice concerns regarding the benefits and burdens of environmental protection, and thus necessitating an analysis regarding the proposed amendment's compliance with Coastal Act environmental justice provisions.

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

Over the years, the Commission has heard from many stakeholders that the vehicular/OHV uses at the Park are contributing to disproportionate air quality impacts on the residents of Oceano, Grover Beach, Nipomo, Guadalupe, and Santa Maria. While Park users gain a unique form of coastal recreation, it comes at a cost that disproportionately impacts underserved communities. This presents a textbook case of environmental injustice. Through its environmental justice authority, the Commission has the ability to address these kinds of coastal inequities while also protecting dune ESHA consistent with the Coastal Act.

²² According to the U.S. Census Bureau, Oceano is approximately 45% Hispanic/Latino with 45% of residents earning less than twice the federal poverty rate. Nipomo is roughly 44% Hispanic/Latino with 23% earning less than twice the federal poverty rate. Because the federal poverty level applies nationwide, areas with a higher costs of living, such as California (and particularly coastal California), often use the number of households or individuals with incomes below twice the federal poverty level as an indicator of poverty.

²³ Guadalupe and Santa Maria are 90.4% and 76% Hispanic/Latino, respectively, with 47% and 45% of the populations making less than twice the federal poverty level, respectively.

4. California Environmental Quality Act (CEQA)

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

The Applicant, State Parks, acting as the CEQA lead agency, certified a Program Environmental Impact Report (State Clearinghouse #2012121008) for its dust control efforts on March 22, 2017, and certified an addendum to the EIR to analyze additional changes on May 28, 2020. The Coastal Commission's review and analysis of coastal development permit applications has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of environmental review under CEQA (14 CCR Section 15251(c)). As a responsible agency, the Commission complies with CEQA "by considering the EIR ... prepared by the Lead Agency and by reaching its own conclusions on whether and how to approve the project involved" (14 CCR Section 15096(a)). The Commission's conclusions in this regard differ from those of State Parks CEQA findings on certain fundamental analyses and conclusions, perhaps most critically with respect to whether and how the dust project, as amended, would lead to public recreational access impacts to OHV use that require mitigation,²⁴ as well as statements and analyses defining OHV activity as a coastal-dependent use as that term is defined under the Coastal Act.²⁵ On these issues, the Commission respectfully disagrees with State Parks, and does not here concur with State Parks conclusions on these issues. On the contrary, the preceding findings discuss the relevant coastal

²⁴ As a mitigation measure for what State Parks' EIR concludes to be a significant and unavoidable impact to public access and recreation due to the loss of OHV acreage, State Parks intends to study the feasibility associated with replacing any area that is currently used for OHV use that is lost to such use for dust control purposes. Specifically, State Parks seeks to provide a 1:1 replacement of any OHV riding areas that become off limits to OHV use under their dust control efforts, where replacement areas would need to be within the same regional geographic location as the Park, and State Parks indicates that it intends to actively research and identify these replacement lands until three years after completion of the dust control efforts or by 2025, whichever is later. However, as the Commission found in its base dust control CDP approval, there are numerous Coastal Act consistency issues with this replacement concept. As a fundamental point, such replacement is unnecessary and unwarranted under the Coastal Act because, for all the reasons articulated above, the dust control measures that have been approved are consistent with the Coastal Act, including its public access and recreation policies, without such OHV riding area replacement. Thus, under the Coastal Act, there is no significant adverse impact to public access and recreation that requires mitigation, let alone 1:1 replacement of riding areas. And all the dunes at the Park are ESHA where OHV use is not allowable, so any replacement area would be inconsistent with the Coastal Act. This conclusion is also consistent with the Commission's March 18, 2021 action modifying CDP 4-82-300, which will require phasing out of OHV use at the Park by January 1, 2024.

²⁵ Coastal Act Section 30101 defines "coastal-dependent development or use" as "any development or use which requires a site on, or adjacent to, the sea to be able to function at all." The riding of OHVs does not require a site on, or adjacent to, the sea, and thus it is not a coastal-dependent use under the Coastal Act. Indeed, State Parks operates at least eight other SVRAs, none of which are sited on, or adjacent to, the sea.

resource issues and Coastal Act consistency with the proposal, and the terms and conditions identify appropriate modifications to avoid and/or lessen any potential for adverse impacts to said resources.

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

5. APPENDICES

A. Substantive File Documents²⁶

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

B. Staff Contacts with Agencies and Groups

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

²⁶ These documents are available for review from the Commission's Central Coast District office.