

**CALIFORNIA COASTAL COMMISSION**

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July 12, 2019

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

Re: Oceano Dunes State Vehicular Recreation Area

Dear Ms. Mangat:

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

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

Commission staff have been providing your agency with feedback on the PWP in ongoing meetings and discussions, as well as in writing since this effort began (e.g., the recent June 13, 2018 letter on the Notice of Preparation for the PWP Environmental Impact Report).

Commission staff also discussed these same issues in depth in a meeting with your main PWP staff in Santa Cruz on April 3, 2019, and briefly on the phone with you and other State Parks senior managers, as well as the Commission’s Executive Director, Jack Ainsworth, on May 16, 2019. The Executive Director and other Commission staff senior managers subsequently had an in-person meeting in Sacramento at your offices on June 3, 2019 with you and your senior management staff, including from the Off-Highway Motor Vehicle Recreation Division, wherein these same issues were again discussed in detail and in depth, including in terms of potential longer term operational and management changes at ODSVRA to ensure compliance with the CDP, the Coastal Act, and the LCP, and where the relationship of these issues to the Coastal

Commission's annual ODSVRA base CDP review in July 2019 in San Luis Obispo were also discussed.

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

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

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

Attached to this letter is an outline and detailed analysis of the significant coastal resource issues and constraints that affect ODSVRA operations as well as some Coastal Commission recommendations based on that analysis. The Coastal Commission believes that any resolution of current ODSVRA issues consistent with the Coastal Act must respond to and address all of the concerns identified in this letter and attachment. The six overlapping issue areas and potential next steps are summarized here:

- **CDP 4-82-300 Compliance Issues.** CDP 4-82-300 approved only interim ODSVRA accessways and OHV use levels. That permit envisioned identifying and finalizing accessways and OHV use levels (the “carrying capacity”) after careful consideration of the environmental impacts on coastal resources and other constraints affecting ODSVRA operations. The Commission does not believe that the current level of OHV use is sustainable in a manner consistent with the Coastal Act and that therefore a much less intensive form of access and recreation must be considered moving forward.
- **Local Coastal Program (LCP) Compliance Issues.** The LCP designates the entire ODSVRA as an environmentally sensitive habitat area (ESHA). Only resource-dependent uses are allowed in ESHA, and OHV use is not a resource-dependent use. Therefore, OHV use cannot be found consistent with the LCP’s ESHA provisions. Any PWP (or other framework used to bring these issues to resolution) is required to be consistent with the LCP.
- **Air Quality Issues.** State Parks is under San Luis Obispo County Air Pollution Control District (APCD) order to reduce dust associated with ODSVRA operations due to what the district has deemed a “significant and ongoing public health threat” for the people living, working, and otherwise present inland of ODSVRA. State Parks has eliminated riding activities from about 100 acres of the ODSVRA and put in place other measures to reduce dust through its partnership with the APCD. However, current APCD assessments are that State Parks’ efforts to date are not resulting in adequate dust reduction. An estimated 500 acres of OHV riding area, or about *one-third of the current riding area* of 1,500 acres, may need to be permanently closed off to all riding activity and revegetated to help resolve public health issues and help meet air quality requirements. The Commission is broadly supportive of approving implementation measures required by APCD that will facilitate State Parks’ compliance with APCD orders to reduce dust associated with ODSVRA OHV operations.
- **Rare and Endangered Species and Habitat Issues.** ODSVRA itself is part of a larger and significant and sensitive ecological system known as the Guadalupe-Nipomo dunes complex. Dunes and dune habitat are among the rarest and most ecologically productive of all coastal ecosystems in California, and these dunes are also home to several special status species protected under both State and Federal law, including the respective Endangered Species Acts (ESA). These habitats and species – which qualify as ESHA under the Coastal Act both in consideration of their special status under the federal and State ESAs, but also independently of either of these statutes – are being significantly adversely impacted at ODSVRA, including a number of violations of the ESA associated with the take of threatened western snowy plovers and endangered California least terns due to vehicular activities every year at the ODSVRA. These activities are in violation of the State and Federal ESAs – and, for substantially the same reasons, are inconsistent with ESHA protections. Furthermore, every year the Technical Review Team’s Scientific Subcommittee has strongly advised State Parks to make the current seasonal enclosure for these species (i.e., an area of approximately 300 acres, or roughly 20% of the current OHV riding area) permanent, at a minimum. These special status species/ESHA issues also dictate that a reduced level and intensity of OHV use is needed at the ODSVRA.

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

surrounding communities. And there are undoubtedly other potential options for appropriately transitioning the Park. The Coastal Commission welcomes the opportunity to engage with you and the community to develop a new vision for ODSVRA and surrounding area for the future.

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

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

Sincerely,



DAYNA BOCHCO, Chair  
California Coastal Commission

Attachment: ODSVRA Issues Discussion

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

## **Attachment: ODSVRA Issues Discussion**

### **CDP 4-82-300 Compliance Issues**

The Coastal Commission's base CDP authorized certain operational and use parameters for OHV activity within the sensitive dune environment at ODSVRA back in the early 1980s. That CDP was premised on understanding and balancing the tension between OHV use and the fact that such use was occurring within biologically sensitive dune areas that the Commission and the County's LCP have both determined meet the Coastal Act's definition of environmentally sensitive habitat area (or ESHA, as defined in Coastal Act Section 30107.5), where such intensive and impactful non-resource dependent use would otherwise not be allowed by the Coastal Act. The CDP's terms and conditions, as amended, set in motion a series of (ultimately failed) efforts to understand the environmentally sustainable "carrying capacity" of the dunes to accommodate OHV use (e.g., carrying capacity studies, the Technical Review Team (TRT) effort, interim use limits, etc.). Ultimately, even today, almost 40 years later, ODSVRA is operating under *interim* and only *temporarily authorized* maximum use standards (e.g., maximum numbers of on-road vehicles, OHVs, campers, etc., per day) that have yet to be finalized as required by the CDP based on an actual accounting of issues and constraints that would dictate appropriate use levels. As discussed herein, it is clear that current interim use levels are not sustainable.

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

In addition, all of the other issues and constraints discussed separately below are also CDP 4-82-300 compliance issues, including as they go to these core questions of sustainable use under the CDP (e.g., issues associated with San Luis Obispo County Local Coastal Program (LCP) compliance, air quality requirements, Endangered Species Act (ESA) compliance, County ownership of some 584 acres of the OHV area in ODSVRA, California Native American tribal concerns (e.g., regarding ancestral lands and sacred sites), and environmental justice concerns related to the effect of ODSVRA operations on the surrounding area, including the community of Oceano). That is not to say that each of these are not issues on their own and that these issues do not independently require resolution for other reasons, but rather it is to acknowledge that the Commission's base CDP remains the fundamental Coastal Act regulatory instrument that governs current operations as well as any next steps at ODSVRA. If the PWP intends to "replace" the CDP, as Parks has indicated is an objective of the PWP effort, then *all* of these CDP issues must be able to be addressed and brought to resolution through it.

## **LCP Compliance Issues**

One of the significant challenges facing ODSVRA is the fact that the LCP designates the *entire* ODSVRA as coastal dune ESHA,<sup>1</sup> and further designates the Park’s wetland and lake areas as Sensitive Resource Areas (SRAs)<sup>2</sup> (i.e., specific types of ESHA under the LCP that are also governed by additional SRA provisions that serve to further protect such resource areas from degradation). Importantly, OHV use is not allowed in ESHA or in SRAs pursuant to the LCP, and thus, per the LCP, OHV use is not allowed at ODSVRA at all. At the same time, because the LCP also acknowledges that OHV use takes place in the Park, and because some LCP policies refer to such vehicular use, it has been argued by some that the LCP includes some internal incongruities on these points.<sup>3</sup> While there is some evidence to suggest that the LCP intended for these potential anomalies to be resolved through establishing the above-described sustainable carrying capacity through CDP and LCP amendments,<sup>4</sup> the reality is threefold: first, the appropriate carrying capacity has never been identified nor defined beyond the interim use limits specified under the CDP; second, neither the CDP nor the LCP has been amended to identify an appropriate and environmentally sustainable carrying capacity; and third, even if that was the road to resolution that was intended in the early 1980s, ESHA and LCP jurisprudence has evolved since the time of original LCP certification in such a way that LCPs must be construed to be consistent with the Coastal Act, which provides LCPs with their statutory authority.<sup>5</sup> The Coastal Act and the LCP’s ESHA sections are clear that only resource-dependent uses are allowed in ESHA. OHV use is not dependent on ESHA resources, and thus under the Coastal Act and the LCP, OHV use at ODSVRA is actually prohibited. Any proposed LCP amendment to harmonize LCP policies with ongoing OHV use would similarly be fundamentally inconsistent with the Coastal Act protections required for ESHA. Given this reality, we have to

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

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

<sup>3</sup> Any potential incongruities on these points, to the degree they exist, are definitely weighted towards ESHA and resource protection, rather than OHV use. In fact, although the LCP explicitly calls out riding in the dunes in places, it does so almost entirely in terms of identifying it as having occurred historically, and also in terms of its adverse impacts on coastal resources. For example, the LCP states that “the unique flora of much of the inland dunes is being severely degraded by recreational vehicle use,” and “continued use of dunes by off-road vehicles has led to environmental degradation of this habitat and has eliminated historical daytime use” (LCP South County Area Plan pages 3-10 through 3-13).

<sup>4</sup> For example, the South County Coastal Area Plan references CDP 4-82-300 and its carrying capacity requirements with respect to understanding and regulating potential camping and OHV use limits, habitat protection, community impacts, and other recreational uses.

<sup>5</sup> See *McAllister v. Coastal Commission* (2009) 169 Cal.App.4<sup>th</sup> 912, wherein the Sixth District Court of Appeal overturned a project approval by the Commission in the early 2000s interpreting an LCP ESHA policy to allow non-resource-dependent (residential in that case) use and development in ESHA. The Court found that such an interpretation was improper, and that the LCP must be understood in relation to the requirements of Coastal Act Section 30240, from which LCP ESHA policies derive their authority, even if those LCP policies might appear to provide an argument to allow a non-resource-dependent use in ESHA. In other words, the Court determined that an LCP cannot be read to allow non-resource-dependent development or use in ESHA, but rather that it must be understood first in terms of Section 30240 requirements. As a published appellate court decision, that decision requires the Commission to interpret LCPs, including the San Luis Obispo County LCP, in that way.

conclude that continued OHV use at ODSVRA because of these Coastal Act and LCP ESHA/SRA inconsistencies is simply not approvable.

Further, about 40% of the total ODSVRA area currently allotted to OHV use, or almost 600 acres, is explicitly designated by the LCP as a buffer area that is “required for habitat protection.”<sup>6</sup> In addition, this nearly 600-acre property is also not even owned by State Parks, but is rather owned almost entirely by San Luis Obispo County (i.e., the roughly 584-acre La Grande property). Regarding the La Grande Tract specifically, three additional things should be mentioned on this point. First, there is no current lease or other arrangement for State Parks to continue using the La Grande property for any purpose. This is the County’s property, and there is nothing stopping the County from disallowing continued State Parks’ use of its property at any time, and/or from disallowing OHV use specifically. Second, whereas there may be some internal incongruities related to LCP text describing potential vehicular use more generally at the Park when it is ESHA, that issue does not apply to the La Grande area because the LCP not only identifies this area as ESHA, but it also explicitly calls it a buffer area “required for habitat protection,” which, based on evidence of OHV use impacts is not compatible with ongoing OHV use. In other words, the LCP does not include any potential incongruities with respect to the La Grande area, and the LCP clearly prohibits OHV use (and any other habitat-degrading use) in this area. And third, in past litigation in the early 2000s over the continued use of the La Grande area for OHV use,<sup>7</sup> the LCP inconsistency issue was not resolved, it remains outstanding to this day, and it would need to be resolved in any Coastal Commission and/or San Luis Obispo County action related to use of that property by OHVs, including through any such action on a CDP amendment, LCP amendment, or a PWP.<sup>8</sup> La Grande property issues, including the fact that State Parks does not even own this acreage, are a significant issue and constraint to continued OHV use at ODSVRA.

Finally, a PWP can only be approved if it is consistent with the underlying LCP (see Coastal Act Section 30605). As described above, there are clearly LCP inconsistencies and issues with continued OHV use, and the County has recently acknowledged as much in recent communications with you, stating: “[South County Coastal Area Plan] Figure 4 and Standard 9 need to be updated to be consistent with the Coastal Commission permit. The project description for the PWP EIR needs to be broad enough to address the potential impacts associated with such an amendment to the County Local Coastal Plan. State Parks should submit and receive approval for that Local Coastal Plan amendment prior to approving the PWP”.<sup>9</sup> The underlying issue is, however, that these types of fundamental LCP inconsistencies cannot be resolved through LCP

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<sup>6</sup> See South County Coastal Area Plan Recreation Policy 9 and Figure 4.

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

<sup>8</sup> The Court ultimately found that it could not reach the merits of the La Grande property case because the lawsuits were challenging a proposed sale of the property at the time and did not request review of a specific agency action related to allowing continued use of the property for OHV. In the case of an agency *action* that would allow continued OHV use, those issues would become relevant and litigable on this very point.

<sup>9</sup> See San Luis Obispo County Counsel Rita Neal’s July 17, 2018 letter to State Parks.



amendments that allow continued OHV use due to core Coastal Act inconsistencies regarding ESHA protections. And, as indicated above, the existing LCP, as understood based on recent court decisions (e.g., the *McAllister* decision mentioned above), directs that OHV use is *not allowed* at ODSVRA under the Coastal Act and the LCP, so it creates a fundamental issue/constraint to State Parks' OHV operations moving forward.

### **Air Quality Issues**

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

Since that time, and based on APCD/CARB assessments that State Parks' efforts to date were not resulting in adequate dust reduction, State Parks recently entered into a Stipulated Order of Abatement (SOA) (in 2018, as modified in 2019) with the APCD to identify and implement additional measures needed to reduce dust related to vehicular activity at ODSVRA. The latest modeling from State Parks' draft PMRP suggests that roughly 500 acres of OHV riding area, or roughly *one-third of the current riding area* of 1,500 acres, may need to be permanently closed off to all riding activity and revegetated in order to help resolve public health issues and to help meet applicable air quality requirements. Again, this is a serious public health issue that in some ways compels more immediate action than many of the other issues and constraints at ODSVRA, and needs effective and timely resolution in the short term. The fact that Rule 1001 was adopted

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<sup>10</sup> Including exceedances of State and Federal ambient air quality standards for particulate matter equal to or less than 10 and 2.5 microns in size, known as PM10 and PM2.5, respectively.

<sup>11</sup> Including most recently on April 11, 2019, April 21, 2019, and May 28, 2019. On those dates, Nipomo had the highest Air Quality Index rating of combined particulate matter and ozone concentrations in the country, according to the United States Environmental Protection Agency (airnow.gov website).

<sup>12</sup> The Commission has been sued by the Friends of Oceano Dunes four times since 2016 over the Commission's authorization of measures to protect inland communities from ODSVRA dust (three times in San Luis Obispo County Superior Court: Case Numbers 16CV-0160, 17CV-0267, and 17CV-0576; and once in federal court (the U.S. District Court for the Central District of California), Case Number 2:17-cv-8733). All of these litigation cases remain pending.

in 2011 but the air quality problem remains, and remains acute, almost a decade later speaks volumes to the need for change at ODSVRA. These aforementioned APCD/air quality issues are particularly relevant with respect to CDP 4-82-300 because of the CDP's primary purpose in understanding and evaluating sustainable use, including with respect to appropriate vehicular carrying capacity, and the way such use affects coastal resources, including significant and sensitive of dune resources. Clearly, the current amount of OHV use, just based on air quality impacts alone, but also in terms of the corresponding effect on coastal resources, is not sustainable nor meeting the CDP's objectives.

In short, ODSVRA vehicular activities have been and are resulting in a significant and continuing public health air quality hazard in the area inland of ODSVRA, notwithstanding measures taken to date to combat these issues, and it appears clear that Park operations must be significantly adjusted for this reason, including in the very short term (as in the next few months). The reality of the effects of the ODSVRA's OHV use on public health, including in relation to dune resource degradation associated with same, is a fundamental issue/constraint to State Parks' operations moving forward and similarly suggests that the status quo is simply not sustainable.

### **Rare and Endangered Species and Habitat Issues**

Despite ongoing OHV use, ODSVRA still represents a rich coastal resource area, and it has been designated as an environmentally sensitive habitat area (ESHA) by the Coastal Commission in the certified LCP, which designation has been affirmed by the Commission countless times since then through its CDP actions and annual reviews. In fact, ODSVRA is part of a larger and significant and sensitive ecological system known as the Guadalupe-Nipomo dunes complex. Dunes and dune habitat are among the rarest and most ecologically productive of all coastal ecosystems, which is why the Commission designates dune as ESHA under the Coastal Act, why the County and the Commission designated dunes as ESHA under this LCP when it was certified, and why the Commission has otherwise affirmed that designation regarding ODSVRA dunes and related habitats as ESHA in its past actions. Not only are the ODSVRA dunes themselves sensitive coastal resources, but this dune habitat is also *very* sensitive to degradation from OHV use and activities. In fact, many studies have looked at the adverse impacts of OHV use on beaches (including both intertidal and upper beach zones) and dunes, finding that OHV recreational activity causes the highest levels of environmental harm to beaches and dunes of *any* recreational activity,<sup>13</sup> where such harm includes disturbing dune physical attributes and stability; destroying dune vegetation and leading to lower plant diversity and cover; and disturbing, injuring, or killing beach and dune fauna (invertebrates and vertebrates), including sensitive species.<sup>14</sup> In addition, dunes often support other sensitive fauna, and at ODSVRA have been identified by the USFWS as critical habitat for the threatened (under the Federal Endangered Species Act (ESA)) western snowy plover. The dunes and other related habitats at

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<sup>13</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>14</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).

ODSVRA also support other endangered and threatened species, including the California least tern, California red-legged frog, steelhead trout, and tidewater goby.<sup>15,16</sup>

Although State Parks implements a suite of sensitive species management measures, it has not been enough to ensure that these rare species and habitats are given the protections that are *required* under State and Federal law, including the respective ESAs. In fact, OHV use at ODSVRA has continued to cause harm to and the death of ESA-protected species, which constitutes illegal “take” of these species under both the State and Federal ESAs. ESA regulators indicate that such take, including such continued and ongoing take, is simply not allowable and is actually *prohibited* under the ESA. For example, in recent 2016 letters to State Parks, the USFWS described continuing western snowy plover deaths (i.e., three western snowy plovers known to be killed by vehicles in just one 30-day period preceding their first 2016 letter, and at least three more killed in the next several months preceding their second letter) and referred to other mortalities of both western snowy plovers and California least terns that have occurred since 2001, all representing significant violations of the Federal ESA.<sup>17</sup> Similarly, in 2015 and 2016 letters,<sup>18</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. Furthermore, vehicles continue to drive through Arroyo Grande Creek when it is flowing, affecting ESA-endangered tidewater goby and ESA-threatened steelhead trout known to be present there. California red-legged frogs are also known to inhabit Arroyo Grande Lagoon, and are similarly under threat. And, most recently in 2018, State Parks documented eight more western snowy plovers and California least terns that were crushed and killed by OHVs.<sup>19</sup>

State Parks has been in a protracted, nearly two-decade effort to develop a Habitat Conservation Plan (HCP) to support an incidental take permit (ITP) related to listed species take at ODSVRA under the Federal ESA, but has never produced a draft HCP for public review, and it is unclear when or even if a Federal HCP/ITP might ever be approved by USFWS.<sup>20</sup> Further, although

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<sup>15</sup> California least tern is listed as an endangered species under both the Federal and State ESAs; tidewater goby is listed as endangered under the Federal ESA, and western snowy plover, California red-legged frog, and South Central Coast steelhead trout are listed as threatened under the Federal ESA.

<sup>16</sup> Although the California and State ESAs are directly administered by other resource agencies (including the United States Fish and Wildlife Service (USFWS) and the California Department of Fish and Wildlife (CDFW)), the Coastal Commission has an independent authority under the Coastal Act to protect coastal resources in general, and ESHA specifically. In discharging this responsibility, the Commission has generally found that habitats for ESA-listed species are protected as ESHA, including the type of occupied listed species habitats that are present at ODSVRA.

<sup>17</sup> See March 29, 2016 and December 22, 2016 USFWS letters.

<sup>18</sup> See July 3, 2015 and March 3, 2016 CDFW letters.

<sup>19</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>20</sup> USFWS published a NOP/NOI to prepare draft environmental documents (under CEQA and NEPA, respectively) for a draft HCP in early 2018, but that NOP/NOI effort did not include an actual draft HCP to be evaluated. In any case, USFWS may need to put the process on hold, including due to State Parks’ pursuit of the referenced PWP that

focused, detailed, and science-based resource monitoring programs are an important element of Federal HCPs/ITPs, and notwithstanding Parks' efforts to date on this point, State Parks has been operating for some fifty years without a comprehensive resource monitoring program vetted under a certified ESA document, such as an HCP/ITP, which impairs the Commission's ability to understand and assess the status of the Park's sensitive habitats and species, and the effect of OHV use on them. In addition, whether or not USFWS ultimately approves an HCP/ITP allowing for some manner of take of ESA-protected species under the *Federal ESA*, CDFW is not allowed to authorize *any* take for California least tern under the *State ESA* except for authorized research (pursuant to the tern's designations as endangered under the State ESA and as Fully Protected under Fish and Game Code Section 3511). Thus, although State Parks can potentially pursue a HCP/ITP to address take under the Federal ESA, it is not clear that there is even a path forward for State Parks to address impacts to listed species under the State ESA and related State statutes. On these points, in 2017 State Parks was served a 60-Day Notice of Intent to Sue for Violations of Section 9 of the Federal Endangered Species Act by the Center for Biological Diversity.<sup>21</sup>

In attempting to address some of these ESA issues, State Parks maintains a seasonal habitat protection enclosure area for listed species in the southernmost seaward portion of the OHV riding area from March through September annually. A total area of approximately 300 acres (or roughly 20% of the current OHV riding area) is off limits to vehicles for that seven-month period. However, for the five-month period from October through February, this southern enclosure area is open to public use, including for camping, street-legal vehicles, and OHVs. Such use results in large areas of flattened terrain and barren sand with very limited scattered natural debris and vegetation, thereby limiting its value as a nesting habitat refuge when the area is off limits for the other seven months of the year. This area is also immediately adjacent to the sensitive Oso Flaco Lake and surrounding dune area that is currently off limits to vehicles for habitat protection purposes as directed by the Commission.<sup>22</sup> For many years, the TRT's Scientific Subcommittee, including the Commission's Senior Ecologists, has strongly recommended that this area be closed year round for rare and endangered species protection

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might result in a different analytic framework when completed (and thus a moving target) for HCP development and review (e.g., different Park configurations, operations, and use levels). As such, and despite the acute need for an HCP, particularly given past documented episodes of ESA species take, it is not clear whether such an HCP will be fruitful at this time in evaluating environmental impacts when ODSVRA's operational parameters are in flux, and in need of fundamental change to address the range of issues and constraints affecting ODSVRA operations.

<sup>21</sup> Including for failure to have an HCP/ITP to authorize take of western snowy plover: "Although Section 10 of the ESA provides for HCPs that, if approved by the Service, could authorize a certain level of take, State Parks does not have an HCP for snowy plovers at Oceano Dunes SVRA. State Parks has claimed that it has been developing an HCP for the Oceano Dunes SVRA pursuant to section 10 of the ESA for over two decades, but no such plan has been approved by the Service or even noticed for public review." However, CBD entered into an agreement with State Parks at that time to not actively pursue said litigation as long as active progress was being made in pursuit of the HCP. CBD indicates that they reserve the right to initiate the litigation should HCP efforts languish, and that they are considering their options on that front currently given the current context on this issue.

<sup>22</sup> Including in 1982 when CDP 4-82-300 was initially approved which prohibited OHV riding in the Oso Flaco area, and in the CDP's fourth amendment in 1991 which prohibited equestrian use in this area as well.

purposes, but State Parks has not implemented this recommendation, and the area currently is only seasonally available for listed species for just over half each year.

Thus, while ODSVRA is ESHA for a variety of reasons, including with respect to ESA-related species and their habitats, thus independently raising Coastal Act and LCP concerns, past and continued rare and endangered species and habitat harm and “take” have constituted and continue to represent outright violations of the State and Federal Endangered Species Acts. Violation of these laws is prohibited and, short of complete avoidance of same at least for the State ESA, are not allowed even with an HCP/ITP. Thus, continued OHV operations at ODSVRA in light of these rare and endangered species/ESHA inconsistencies is another fundamental issue/constraint to State Parks’ operations moving forward.

### **Environmental Justice and Tribal Issues**

At its August 2018 meeting, the Coastal Commission adopted its Tribal Consultation Policy to comply with state law and ensure California Native American tribal members are full participants in Commission decisions that affect cultural resources. In addition, at the March 2019 meeting, the Commission adopted its Environmental Justice Policy, the goal of which is to integrate the principles of environmental justice, equality, and social equity into all aspects of the Commission’s coastal resource planning and regulatory program. Taking an environmental justice approach to coastal policy requires a fundamental re-thinking of who is connected to the coast, and how. For instance, tribal and indigenous communities with cultural ties to the coast depend on access to ancestral lands and sacred sites to maintain traditional practices, yet their unique perspectives are frequently overlooked or undervalued. Environmental justice stakeholders across the country who have been working in this policy arena for decades have also noted that wherever low income communities and communities of color are concentrated in coastal regions, they are frequently disconnected from the coast by both social and physical barriers. Historic inequalities, as well as California’s growing population, changing demographics, socio-economic forces, judicial decisions, and policy choices continue to shape development patterns and population shifts that widen the disparity gap. Not only is equitable access to the coast for all Californians essential, so is protecting coastal natural resources for future generations.

OHV uses at ODSVRA have led to disproportionate impacts on the residents of Oceano, who bear all of the burdens of the ODSVRA operations with essentially none of the benefits. The town of Oceano is the de facto “gateway” to ODSVRA, but OHV use has not only limited economic development of Oceano’s beachfront but it has also prevented any meaningful non-OHV use of the immediately adjacent six miles of the community’s sandy beaches and some 1,500 acres of coastal dunes. While other seaside California residents take for granted being able to picnic, stroll, or just sit on a beach towel, this is not an option for many in Oceano. The use of the beach and natural dune areas for OHV riding has also been a long term concern for local tribal representatives (especially the Northern Chumash), who were not adequately consulted when the initial CDP was approved and when the LCP was first certified for this area, who do not support continued OHV use, and who consider ODSVRA to include areas that are sacred ancestral lands that should not, in any circumstance, be used in these ways. For the community of Oceano, not only are these coastal and shoreline areas ‘lost’ to the community, but these kinds

of impacts are also only compounded by other impacts, such as the aforementioned dust problems that fall disproportionately on this community. Similarly, year-round grading and sand removal at the ODSVRA entrance (i.e., State Parks apparently weekly removes sand from the Park's entrance areas and trucks it to the local landfill) has the undesirable effect of potentially funneling higher tides into the town. This practice also represents a counterproductive coastal hazard adaptation strategy and activity where removal of this natural barrier to sea level rise actually diminishes one of the community's most valuable resources for future resiliency and adaptation to rising seas. In fact, one of the more important dune ecosystem functions is the ability to serve as a buffer against rising seas and coastal hazards, and any activity that weakens or adversely impacts dunes also weakens this critical adaptation and protection function as well.

In addition, ODSVRA operations are seen by many as stunting what some consider basic community services, local amenities, and economic improvements for the community of Oceano, a community that is 49.8% Hispanic/Latino with a federal poverty rate of 18.8%,<sup>23</sup> and a community that was designated as an "Opportunity Zone" by Governor Brown in 2018.<sup>24</sup> The community is more recently becoming more organized in this respect, including the recent creation of the Oceano Beach Community Association and their work with local Cal Poly San Luis Obispo students to help update the Oceano Community Plan. The County too has recently raised concerns of this type, stating in 2018: "Oceano residents are impacted by the operation of the ODSVRA. The two million annual visitors to the park are impacting the residents of Oceano as they come and go using Pier Avenue (the primary access point to the park). Residents must deal with sand tracked out of the park on vehicle tires and blown off their trailers as they depart 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."<sup>25</sup> To the County's point, recent years have seen an increase in unpermitted activities in the dunes (e.g., concerts, such as the Pismocean event), large scale OHV events (e.g., Huckfest), and a series of significant injuries and even deaths, all related to the high-intensity OHV use of ODSVRA, and all also unduly affecting the surrounding communities. In addition, the aforementioned dust adversely affects inland communities, like Oceano, and also Nipomo (which is 39.6% Hispanic/Latino with a 10.2% poverty rate) disproportionately. This presents a classic environmental justice dilemma, wherein Park users gain the benefits of Park use, but adjacent and inland communities, particularly less affluent communities of color, are forced to bear the problems and degradation associated with that use. Unlike the more affluent, adjacent beach communities, such as Avila Beach and Pismo Beach, the residents of Oceano have *no* non-motorized beach access options, and the downwind, inland residents residing under the dust plume receive no benefit from ODSVRA operations. It is clear that these kinds of impacts and inequalities to surrounding areas need to be reassessed, both in light of the Commission's recent Environmental Justice Policy and Tribal Consultation

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<sup>23</sup> According to the U.S. Census American Community Survey 5-Year Estimates, 2013-2017. For relative reference, California's poverty rate overall is 13.3%, and the City of Pismo Beach's is 8.4%, with a population that is 84% non-Hispanic white.

<sup>24</sup> Pursuant to the Tax Cuts and Jobs Act of 2017.

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

commitments, but also in terms of appropriately addressing historic and generational inequalities that are at least partially due to Park operations on surrounding areas, in a manner which is consistent with the protection of coastal resources, as required under the CDP, Coastal Act, and LCP.

In short, ODSVRA has been operating for many years without adequately addressing environmental justice and Native American tribal concerns, and these concerns need to be clearly and effectively taken into account as the future of ODSVRA operations is considered. It is clear that current operations of ODSVRA do not adequately respond to the way in which they affect surrounding communities, including those which are less wealthy and include more underserved people of color, and do not appropriately respond to the needs of the tribes that consider these areas sacred ancestral lands and their ancestral home. These are all core CDP 4-82-300 issues as well, not the least of which is because the CDP required State Parks to select an OHV access and staging system that accounted for and reduced impacts to the community of Oceano. Again, the entrance system has never been finalized as required, the impacts to the community remain unaddressed and unmitigated, and these environmental and tribal justice issues are also a fundamental issue/constraint to State Park's operations moving forward that suggest that the status quo is not sustainable.

#### **PWP and PWP Proposed Project Issues**

As indicated at the outset of this letter, Commission staff and the Commission have discussed with State Parks and identified over the last couple of years the issues and constraints that need to be resolved through State Parks' proposed PWP, as discussed above. To date, however, the Commission has yet to see any actual draft PWP language. Thus it is unclear to what degree these issues and problems are being considered and addressed, and thus whether the PWP can possibly be successful in that regard. Therefore, the Commission was surprised when the first substantive PWP document that was distributed publicly for review (in February 2019) simply identified a series of projects to be undertaken, but did not address the issues and constraints that Commission staff and the Commission has been discussing with State Parks staff for some time. In fact, the primary proposed project apparently being considered under the PWP does not really address these far ranging issues, problems and constraints, but instead would actually appear to exacerbate all of them – namely the proposed new campground, staging, riding, and OHV entrance at Oso Flaco Lake. This project not only presents what appear to be serious LCP inconsistencies related to agricultural conversion and ESHA degradation, at a minimum, but instead of circumscribing Park uses and activities in ways that resolve the problems identified, it actually would appear to *increase* OHV use and related impacts associated with same. This project appears to be based on a premise of a 'no net OHV loss of riding area', which is a perspective that has long been espoused by OHV riding groups such as the Friends of Oceano Dunes, and a perspective articulated by Parks when Commission staff met with State Parks staff in early 2017 as Parks was kicking off their PWP effort. However, as Commission staff informed State Parks then, and as it has continued to inform State Parks since, 'no net OHV loss' is not only something the Commission cannot support as a foundational element of the PWP, but is actually both counterproductive to success and counterintuitive in terms of the very real issues and constraints affecting ODSVRA and its continued operations. In any event, the Commission does not believe that the proposed Oso Flaco Lake project is approvable, nor does it believe it

shows that the PWP effort is moving in the right direction. On the contrary, it appears to be a fairly clear indication that the PWP is heading in direction that is not in keeping with the vision of a developing a contemporary plan that addresses the many difficult and serious issues and constraints presented by OHV riding in the dunes.

### **Next Steps**

As indicated, the Commission has always viewed the PWP effort as a vehicle to address issues and problems that have been identified over the years due to ODSVRA operations, including issues and problems as they pertain to the base CDP but also as related to LCP inconsistencies, air quality and public health dangers, ESA violations, and environmental and tribal justice. And State Parks has likewise described this PWP effort as taking a fresh look at modifying Park operations in light of these current issues and realities while providing for ODSVRA uses that appropriately respond to and respect ODSVRA's special coastal setting. As indicated above, in the Commission's view the issues and constraints that collectively affect ODSVRA make it clear that ODSVRA cannot continue to operate as it has in the past. Instead, the identified issues and constraints suggest that it is time to start thinking about ways to transition ODSVRA away from OHV use to other forms of public access and recreation that better respond to the current realities that affect and are affected by activities at this shoreline location. In short, in the Coastal Commission's view ODSVRA operations that are fully consistent with on-the-ground realities, and with today's laws and requirements, do *not* include OHV use.

As is, the entire ODSVRA is ESHA where OHV use is not even allowed, some 584 acres (or roughly 40% of the OHV riding area) are owned by San Luis Obispo County, some 500 acres (or roughly 33% of the OHV riding area) may soon be closed to riding due to APCD/CARB dust control requirements, and some 300 acres (or roughly 20% of the OHV riding area) needs to be made a permanent ESA-habitat enclosure off-limits to OHV. It is clear to the Commission that the constraints are rapidly closing in on OHV use, and it appears clear that it is happening in the very short term. Granted, current vehicular and OHV users will no doubt suggest that allowing continued OHV use is exactly the manner in which State Parks should proceed, including in light of the OHV-related legislation,<sup>26</sup> but to do so is to suggest that State Parks should simply

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<sup>26</sup> On that point, it is important to note that that legislation (i.e., Public Resources Code (PRC) Section 5090 et seq) supports and encourages OHV recreational use, but at the same time it does *not* support it at all costs. In fact, the legislation is clear that when OHV use is leading to problems, such as is the case at ODSVRA, then it is appropriate to shut down that use if necessary to protect sensitive natural and cultural resources. For example, PRC Section 5090.02(a)(3) states that the Legislature finds: "The indiscriminate and uncontrolled use of those vehicles may have a deleterious impact on the environment, wildlife habitats, native wildlife, and native flora"; and PRC Section 5090.02(c)(4) states: "When areas or trails or portions thereof cannot be maintained to appropriate established standards for sustained long-term use, they should be closed to use and repaired, to prevent accelerated erosion. Those areas should remain closed until they can be managed within the soil conservation standard or should be closed and restored"; and PRC Section 5090.35(a) states: "The protection of public safety, the appropriate utilization of lands, and the conservation of natural and cultural resources are of the highest priority in the management of the state vehicular recreation areas." Thus, although it has been argued by some that this enabling legislation does not allow for the phasing out of OHV use, the legislation itself paints a different picture, one that clearly recognizes that it does *not* stand for OHV use at all cost, and rather requires such use to be undertaken in a manner consistent with long-term sustainable use where the conservation of natural and cultural resources is prioritized; and it certainly allows for closing off OHV use where it is causing the types of problems it is causing at ODSVRA. In addition, and



disregard the realities affecting ODSVRA, and to suggest that those realities are somehow inconsequential. In the Commission's view, they are not. It is not a single issue that is leading to this conclusion, rather it is the myriad of significant and overlapping issues, including those described in this letter and attachment, that are compounding and that together serve to constrain what can and should happen in ODSVRA. In the Commission's view what is appropriate in the coastal zone necessarily changes and evolves over time, including with advancing scientific knowledge and more appropriate, evolving regulatory requirements to protect sensitive habitats, species and other coastal resources. OHV use in ESHA, and the amount of problems engendered by it, is not an appropriate use in this setting in light of the serious issues and constraints identified above. The Commission hopes that State Parks agrees, and looks forward to working with State Parks in the development of a contemporary ODSVRA plan for Oceano Dunes that recognizes current science, contemporary laws and regulations, and good public policy that is in the best interests of all people.

On that point, the Commission notes that there are clearly a range of options that State Parks could consider moving forward that can appropriately respond to the above-described significant issues and constraints affecting continued operations at ODSVRA, and further notes that there are those who would suggest that ODSVRA eliminate vehicular use in the dunes as one potential solution. It is clear to the Commission that that would be a fair conclusion based on the evidence. At the same time, it is also clear to the Commission that there may be other options that would make sense for both State Parks and the public, including a version of ODSVRA's future that retained some non-OHV vehicular use of ODSVRA, not only based on its designation as a vehicular recreation area, but also based on its rich history in providing for and accommodating other forms of vehicular use that would not have the same level of adverse impact as OHV use. For example, street-legal vehicle camping on a limited portion of the beach might be able to provide a unique, lower-cost, overnight coastal camping opportunity that ties into the history of ODSVRA and continues its rich camping tradition, but with a significantly reduced impact on sensitive coastal resources and surrounding communities. If properly designed, it could not only retain a unique offering in coastal California, but it could also allow for safe access for residents and visitors that would have the added benefit of greater compatibility with the town of Oceano, including being more closely aligned with its growth and related economic development.

In any case, these issues, constraints, and conclusions, however, also represent an important opportunity to rethink this Park and what 3,600 acres of State-owned and operated dune ESHA and six linear miles of public beach *should be* into the future, properly taking into consideration protection of coastal resources. And the PWP process in which State Parks is engaged can clearly operate as a key vehicle to think about, define, and effectuate that future. But to the Commission, the coastal resource issues and constraints that collectively affect ODSVRA make it clear that ODSVRA's future cannot continue to operate as it has in the past without change under the CDP.

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perhaps just as compelling, PRC Section 5090 does not somehow preempt other State laws, including the Coastal Act (and by extension the LCP). On the contrary, as with other laws affecting the same resources, it is important to harmonize the laws as much as possible. On that point, here, proper application of both laws based upon facts on the ground would appear to suggest the same outcome: namely that OHV use at this location is not sustainable, and the time has come to transition to other appropriate recreational uses.

Instead, the identified issues and constraints suggest that it is time to start thinking about ways to transition ODSVRA away from OHV use to other forms of public access and recreation that better respond to the current realities that affect and are affected by activities at this shoreline location. ODSVRA operations that are fully consistent with on-the-ground realities and with the legal requirements of the CDP, Coastal Act, and LCP do not include OHV use, and thus, whether through the PWP process or otherwise, including through a future CDP review, State Parks needs to explore a future ODSVRA that transitions away from OHV and towards less intensive forms of public access and recreation.

Again, there are clearly a range of possibilities that could be considered for ODSVRA moving forward, including undoubtedly others different from these, and the Commission *very much* welcomes the opportunity to engage with State Parks and the community in an effort to develop a truly new vision for the Park and surrounding area for the future. Good coastal planning and good public policy direct no less.