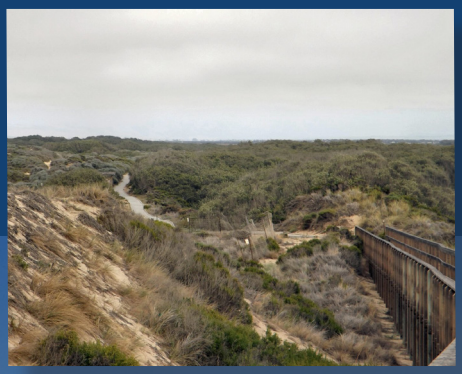










# Final Environmental Impact Report

# Habitat Conservation Plan for the Oceano Dunes District

## Volume 2: Comments and Responses on Recirculated Draft EIR

May 2026

# California Department of Parks and Recreation
# Oceano Dunes District Habitat Conservation Plan

## Final Environmental Impact Report

*SCH No. 2018011012*

## *Volume 2: Comments and Responses on Recirculated Draft EIR*

May 2026

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# VOLUME 2: COMMENTS AND RESPONSES ON RECIRCULATED DRAFT EIR

## OCEANO DUNES DISTRICT HABITAT CONSERVATION PLAN ENVIRONMENTAL IMPACT REPORT

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# CHAPTER 1 INTRODUCTION

This document is Volume 2 of the Final Environmental Impact Report (EIR) for the Oceano Dunes District Habitat Conservation Plan (HCP). In accordance with CEQA Guidelines Section §15132, this document together with the EIR with Revised Text (Volume 1) and Technical Appendices (Volume 3) constitutes the Final EIR for the Oceano Dunes District HCP.

This volume contains public comment received on the Recirculated Draft EIR. Pursuant to CEQA Guidelines Section §15088, the California Department of Parks and Recreation (CDPR), Off-Highway Motor Vehicle Recreation (OHMVR) Division has evaluated the comments and prepared a written response describing the disposition of significant environmental issues raised. Where the responses to comments have resulted in a revision to the Recirculated Draft EIR, text changes are noted in this volume as well as incorporated into EIR Volume 1.

This volume has the following chapters, in addition to this Introduction:

**Chapter 2** **Master Responses to Comments.** This chapter provides a written response by the OHMVR Division as Lead Agency to each comment raising a significant environmental issue submitted on the Recirculated Draft EIR.

**Chapter 3** **Individual Responses to Comments.** This chapter includes a copy and/or a summary of the written and oral comments received on the Recirculated Draft EIR and CDPR's responses to unique significant environmental comments. The master responses from Chapter 2 are referenced where appropriate.

**Chapter 4.** **Comment Received on Recirculated Draft EIR.** This chapter contains copies of the comment letters and email communications received on the Recirculated Draft EIR during a public review period from November 24, 2025 through January 23, 2026. The comment letters have been individually numbered. A list of those who commented is provided at the front of the chapter in Table 3-1.

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# CHAPTER 2 MASTER RESPONSES TO COMMENTS

This chapter presents master responses to environmental issues raised in multiple comments on the Recirculated Draft EIR. They are organized by topic to minimize duplication, provide a more comprehensive response than may be possible in responding to individual comments, and so that reviewers can readily locate all relevant information pertaining to an issue of concern. Chapter 4, Responses to Individual Comments, presents individual responses to each comment, with cross-references to relevant master responses as appropriate.

Each master response is intended to provide a general response to several comments on the given subject. A particular master response may provide more information than requested by any individual comment. Conversely, the master response may not provide a complete response to a given comment, in which case additional information may be contained in the individual response to that comment. Master responses in this Response to Comments Document address the following issues:

1. HCP Purpose, NEPA Compliance, and ITP Issuance Requirements
2. HCP Proposed Levels of Permitted Take
3. HCP with CDPR Mission and Mandates
4. Consistency with Coastal Act
5. Public Works Plan
6. CEQA Baseline and Scope
7. Reduction of Boneyard and 6 Exclosures (CA-50)
8. Predation
9. Dust Control Program (CA-44)
10. California Fully Protected Species
11. Climate Change and Sea Level Rise
12. Mechanical Trash Removal (CA-21)
13. Limited Trail Riding (CA-42)
14. EIR Discussion of Alternatives
15. Recreation Impact Significance Threshold

# MASTER RESPONSE 1: HCP PURPOSE AND ITP ISSUANCE REQUIREMENTS

## HCP and EIR Background, Process and Timeline

The purpose of the HCP is to present a sustainable conservation program to USFWS for issuance of an Incidental Take Permit (ITP) in compliance with FESA to authorize take of listed species that is incidental to otherwise lawful activities. An HCP is not a species recovery plan, as defined in Section 4 of FESA, and is not required under FESA to eliminate all activities that could result in take or to include activities that directly contribute to delisting covered species populations. The proposed HCP would enhance and formalize CDPR's already established natural resource management program by adding biological goals and objectives to existing program guidance and providing funding assurances for the duration of the ITP.

CDPR began preparing the Oceano Dunes District Draft HCP in 2001. CDPR engaged in formal consultation with USFWS to determine the HCP area boundaries and species to cover, collect data, and refine management and conservation actions. The scope of the HCP evolved over the subsequent years during consultation with USFWS and CDFW, including initially incorporating San Luis Obispo Coast District park units, analyzing additional species, and evaluating a combined HCP/ Natural Community Conservation Plan (NCCP) document. During this time, covered activities and potential future projects to be included in the HCP were being identified in light of other agency planning efforts, including the Dust Control Program.

CDPR determined that an EIR is the appropriate document for CEQA compliance and issued a Notice of Preparation (NOP) on January 9, 2018. The NOP provides a brief overview of a project and is meant to facilitate public and agency input regarding the scope of the environmental review document. CDPR distributed a Draft EIR in 2020 for review and comments. Given new information, including the inclusion of new proposed covered species (see EIR Volume 1 section 1.7), CDPR prepared and circulated a Recirculated Draft EIR in 2025.

The HCP is a required part of the application for a federal ITP under FESA. Issuance of the FESA ITP authorizes take of federally-listed species, regardless of state listing status. See Master Response 10: California Fully Protected Species and NCCP for information regarding the anticipated process for state take authorization.

## Take Authorization

As the permit applicant, CDPR's role is to define the project description and determine the covered activities under the ITP. Recreational use, and specifically motorized recreation and vehicle camping in the HCP area, is already fully authorized to operate per state designation as a State Vehicular Recreation Area (SVRA) under the California Off-Highway Motor Vehicle Recreation (OHMVR) Act of 2003, as amended (Public Resources Code [PRC] § 5090.01 *et seq.*) and as an approved use in the Coastal Zone under the County Local Coastal Plan. An approved HCP and ITP is not specifically required to continue operation of the park, but the ITP is needed to ensure that all activities within the park are conducted in compliance with FESA. Federal issuance of an ITP does not authorize the existing park activities that may cause take; rather, the ITP authorizes the take of species that may occur as a result of these activities.

CDPR intends to continue operating Oceano Dunes SVRA as a park unit allowing motorized recreation consistent with its legislative designation. The HCP describes a conservation program that will operate concurrently with covered activities for the duration of any issued ITP.

CDPR intends to return the northern portion of the seasonal exclosure to year-round open access if biological criteria in the HCP are met. See Master Response 3: HCP with CDPR Mission and Mandates, for further discussion on accommodating recreation and conservation.

The HCP identifies ongoing activities and also proposed and potential future changes to park operations. The EIR has identified the biological effects of existing covered activities in Volume 3 EIR Appendix D as baseline conditions. See Master Response 6: CEQA Baseline and Scope. To the extent any of the covered activities identified in the HCP – whether ongoing, proposed, or potential in the future – could result in incidental take, such take would be covered by the ITP (see HCP Appendix A Table A-3). The ITP does not authorize CDPR's activities causing the incidental take, but rather the incidental take resulting from CDPR's activities.

As stated in the HCP Handbook section 3.5.1:

> "Otherwise lawful" is a key factor in determining whether we can cover an activity in an HCP. This means that applicants must have the legal authority to successfully conduct the proposed activity in order to meet issuance criteria. The Services may accept an applicant's assertions of lawfulness (see the certifications made in section D.2 on the FWS application form).
>
> For most activities we consider in HCP review, the Services can readily accept an applicant's certification regarding the lawfulness of their activities. Typical construction, timber management, mineral extraction, or other land management activities usually do not raise questions of lawfulness. For such routine activities, we must stay mindful that we do not enforce State and local laws authorizing the activity. This means that we do not generally evaluate an applicant's compliance with local requirements (though we may refer an applicant's non-compliance to appropriate authorities), nor do we second guess a local jurisdiction's interpretation or enforcement of its requirements (USFWS and NOAA Fisheries 2016).

**ITP Issuance Criteria**

HCPs are required in ITP applications. HCPs are intended to balance applicant objectives and conservation goals, and to minimize incidental take authorized under an ITP. The purpose of an HCP is not species recovery or delisting. HCPs must always meet the following issuance criteria:

- The taking will be incidental.
- The applicant will, to the maximum extent practicable, minimize and mitigate the impacts for such taking.
- The applicant will ensure that adequate funding for the HCP and procedures to deal with unforeseen circumstances will be provided.
- The taking will not appreciably reduce the likelihood of survival and recovery of the species in the wild.
- The applicant will ensure that other measures that the Service may require as being necessary or appropriate will be provided.
- The Services have received such other assurances as may be required that the HCP will be implemented.

### Species Targets and Requested Take Authorization

Oceano Dunes District plays a key role in recovery of SNPL and CLTE. The numbers of breeding SNPL adults and CLTE breeding pairs have trended upward over the past 25 years. The breeding adult population of SNPL has increased from 32 individuals in 2002 to a 5-year average of 207 (2019 through 2023; HCP Table 3-8). In addition, from 2002-2023, the running average annual SNPL chicks fledged per breeding male is 1.45, which exceeds the recovery target that the USFWS established for the species. The HCP area has averaged more than 1 chick/breeding pair from 2006 to 2023, and with one exception has consistently fledged far more chicks per pair than the statewide average (see HCP Table 3-11). From 2004 to 2023, the HCP area produced more than 71 percent of all the CLTE chicks that fledged from all breeding sites in Santa Barbara and San Luis Obispo counties (see HCP Table 3-12). The USFWS will analyze these data, and other best available data on the conservation program and the impacts of the covered activities, to determine whether the conservation program in the HCP, with AMMs and mitigation described in the HCP, sufficiently offsets the take requested by CDPR.

The threshold biological metrics in the goals and objectives were defined based on species Recovery Plans, 5-year Reviews, expert opinion, scientific literature, CDPR species-specific monitoring data, habitat quality and acreage for each species in the HCP area, and site-specific conditions.

### Contribution Toward Species Recovery

The purpose of an HCP is not species recovery or delisting, but to ensure that the taking meets permit issuance criteria and does not appreciably reduce the likelihood of survival and recovery of the species. The Oceano Dunes District HCP seeks to conserve the covered species while balancing competing uses within the HCP area.

## MASTER RESPONSE 2: HCP PROPOSED LEVELS OF PERMITTED TAKE

### SNPL and CLTE Take Detection

Some commenters assert that the HCP underestimates take of SNPL and CLTE because take of these species goes undetected in the HCP area and/or the methods for detecting take are unscientific or opportunistic. Though it is acknowledged that some mortalities may go undetected given the species' cryptic nature, the daily surveys during breeding season and weekly surveys during the non-breeding season are comprehensive, and discovery of carcasses is not incidental. Survey methodology is described in the annual nesting reports and HCP and briefly summarized here:

Daily monitoring by multiple monitors occurs from March 1 to September 30. See HCP section 5.4.1.1 and the annual nesting season report (CDPR 2024a) for details on monitoring methodology. Monitoring of the open riding area, the area most likely to have incidental take, occurs daily along defined transects, as any nests or chicks located in this area require immediate protection from recreational activities and may require additional monitoring. These daily transects include portions of the revegetation areas closest to the open riding area. Staff look for nesting bird sign, predator presence or sign, and nonpermitted visitor activity (such as off-leash dogs or kites near the exclosure). Staff also rescue sick or injured wildlife and collect deceased wildlife. Areas along transects with CLTE or SNPL activity indicating potential nesting interest (scraping or copulating) receive more thorough checks on foot and with increased frequency using binoculars or spotting scopes. Monitors pay particular attention to the boundaries of the

Southern Exclosure, 48-acre foredune closure area, and revegetation areas, looking for indications of nesting close to the open riding area and for tracks or other signs of CLTE or SNPL movement into the open riding area. Close brood monitoring occurs daily, including during times when staff walk within the exclosure, and is prioritized for any brood movement toward or into the open riding area (CDPR 2024a).

CDPR acknowledges that despite extensive searching, actual take numbers are likely somewhat higher than observed since not all take can be detected; carcasses can be buried, scavenged, washed over by tide, or undetected. The actual and potential incidental take numbers provided in HCP Tables 4-1, 4-2, and 4-4 account for observed instances of take based on existing staffing and level of effort. Given the intensive monitoring protocols, CDPR assumes that most take instances are observed. With continuation of this same level of effort, the estimated take tables (HCP Tables 4-3 and 4-5) should account for actual take.

### SNPL and CLTE Take Estimates

Some commenters state that requested permitted take authorization levels for SNPL and CLTE in the HCP are too high.

Given that both covered activities and the conservation program described in this HCP are largely ongoing, incidental take estimates are based primarily on past take data, and allow for take associated with new covered activities, such as modifications to activities conducted to meet air quality metrics (CA-44), salvage of eggs and chicks (CA12b), and as noted account for past undetected mortalities.

The SNPL and CLTE effects analyses in HCP sections 4.3.1 and 4.4.1, respectively, provide a complete discussion of all aspects of covered activities that could possibly impact SNPL and CLTE. However, not every effect on SNPL or CLTE rises to the level of take.

The HCP quantifies lethal take, capture, and harm of SNPL and CLTE within the HCP area in terms of take of individual SNPL and CLTE adults, juveniles, chicks, and eggs caused by park operations, recreation, and other activities not related to covered species management. Impacts from management activities related to monitoring and protecting SNPL and CLTE (recovery activities) are referenced in HCP Appendix C and will be authorized under the 10(a)(1)(A), Recovery Permit (TE-815214-10).

The estimated incidental take of SNPL and CLTE is summarized in HCP Tables 4-3 and 4-5, respectively, and discussed in detail in sections 4.3.2 and 4.42, respectively.

The number of breeding SNPL adults and CLTE breeding pairs have trended upward over the past 25 years despite past take from ongoing park operation activities. The natural resources management program has ensured stable or increasing SNPL and CLTE populations in the HCP area even with documented levels of ongoing take. Proposed new covered activities are not expected to substantially increase take levels beyond past levels. Therefore, CDPR anticipates that SNPL and CLTE can sustain the requested levels of permitted take while maintaining stable or increasing populations in the HCP area.

## MASTER RESPONSE 3: HCP WITH CDPR MISSION AND MANDATES

### Multiple Mandates

As the ITP applicant, CDPR determines the content of the HCP, while the USFWS evaluates the HCP against the ITP issuance criteria. As described in HCP section 1.1, CDPR manages state

park units as a State trustee agency for the benefit and inspiration of all state residents and visitors to state parks. As further described in that section, CDPR operates Pismo State Beach and Oceano Dunes SVRA with a mission to provide protection of natural, cultural, and recreational values in perpetuity. This mission includes providing for the public use and enjoyment of those lands by preserving, managing, and expanding recreational opportunity consistent with park unit classifications.

CDPR has a legislative mandate to operate SVRAs in a manner that provides sustainable motorized recreation (PRC § 5090.01 *et seq*.). As such, it is the mission of the CDPR Off-Highway Motor Vehicle Recreation (OHMVR) Division to "balance OHV recreation impacts with programs that conserve and protect cultural and natural resources" (EIR Volume 1 section 2.2.1). The OHMVR Division is charged with administering the state's OHMVR Program to provide high quality OHV recreation opportunities and to provide for the conservation of natural and cultural resources.

Oceano Dunes SVRA is a park unit designated for OHV recreation. Of the 280 CDPR units, 9 of which are classified as SVRAs, Oceano Dunes SVRA is the only California park unit allowing motorized recreation on a beach (EIR Volume 1 section 8.2.1). Motorized recreation has occurred historically on the beach since the turn of the 20th century, prior to state purchase of the property and establishment of the SVRA in 1975 (EIR Volume 1 section 8.2.3.3). CDPR is responsible for management, maintenance, administration, and operation of SVRAs such as Oceano Dunes SVRA (PRC § 5090.32 b). Park operations at Pismo State Beach and Oceano Dunes SVRA are subject to multiple regulatory programs and approved plans enacted for the purpose of resource protection. The complex regulatory environment includes compliance with the following laws, plus others:

- Federal and California Endangered Species Acts (FESA and CESA) governing the protection of special-status species.
- PRC specific to DPR resource management in State Beach and SVRA park units (e.g., Cultural Resource Management Program, SVRA Wildlife Habitat Protection Program [WHPPs]).
- Coastal Act/Local Coastal Program and conditions of the park's Coastal Development Permit (CDP 4-82-300, as amended) governing coastal resources.
- Stipulated Order of Abatement (SOA) with the San Luis Obispo Air Pollution Control District (APCD) and subsequent Annual Work Plans governing implementation of dust control measures at Oceano Dunes SVRA.

See Master Response 4: Consistency with Coastal Act and Master Response 8: Dust Control Program (CA-44).

**Non-Motorized and Motorized Recreation**

Pismo State Beach and Oceano Dunes SVRA park units provide both motorized and non-motorized recreation opportunities. Large areas of the HCP area are designated for pedestrian use only with motorized use prohibited (e.g., Pismo State Beach north of Grand Avenue, Pismo Dunes Natural Preserve, and Oso Flaco Lake area). EIR Volume 1 Table 8-3 shows that of the 5,005 acres in the HCP area, roughly 1,400 acres are open to motorized recreation (street legal or OHV) while roughly 4,100 acres are open to pedestrians, and 2,300 are open to equestrians.

The HCP area includes 9 miles of shoreline. No vehicle access is permitted north of the Grand Avenue access ramps or south of Post 8 as shown in Figure 2-6. This provides almost 4 miles of

beach access for non-motorized recreation such as walking, jogging, swimming, surfing, birdwatching, biking, etc. Street-legal only vehicles may occur on the 2-mile stretch of beach south of the Grand Avenue access ramps to Post 2. OHV recreation on the beach is restricted to roughly 3 miles of shoreline between Post 2 and slightly south of Post 8; during the breeding season, vehicles can only traverse the shoreline south to Post 6. OHV use in the HCP area does not prevent access on the beach for non-motorized recreation. Additionally, allowing vehicles on the beach provides dispersed access for campers, surfers, anglers, and other non-motorized recreationists and allows visitors with mobility limitations the chance to access a much greater area of beach and dune than would otherwise be possible.

**Accommodating Recreation and Conservation**

As noted in HCP section 1.1, CDPR has a mandate to balance the need to protect California's natural resources, while providing recreational access to the parks, requires the development of sound management strategies that are based on the best available scientific, demographic, and economic information. Compliance with applicable regulatory programs can be achieved while allowing continuance of motorized recreation.

Progressive changes have occurred in the park to increasingly manage and protect cultural and natural resources from damage by motorized recreation (see EIR Volume 1 section 2.2.2 and section 9.2.3.2 discussion of Recreation and Public Access). The success of the SNPL and CLTE conservation program discussed above supports the effectiveness of these protection and management efforts. Compliance with the regulatory programs has resulted in reduced OHV riding area opportunity over time. The HCP balances the FESA requirement to minimize and mitigate take of listed species to the maximum extent practicable (FESA section 10(a)(2)(B)(ii)) while operating an SVRA and maximizing recreation opportunity. The discussion in Master Response 1: HCP Purpose and ITP Requirements regarding species targets and breeding numbers illustrates that both recreation and conservation can exist with the HCP area.

As demonstrated by the SNPL and CLTE breeding and population numbers, the conservation program has resulted in the observed growth of SNPL and CLTE populations in Oceano Dunes SVRA with OHV recreation occurring adjacent to seasonally protected nesting areas during the breeding season since both species were added to FESA.

The HCP proposes an adjustment in the protected nesting acreage to reclaim a portion of the recreation area historically used for motorized and nonmotorized recreation by reducing the seasonal exclosure if species population targets are met (CA-50). If these metrics are achieved, the 6 Exclosure reduction would be implemented incrementally to allow for adaptive management and reversal of the 6 Exclosure reduction if those population metrics are in danger of not being met in a given season. HCP section 2.2.5.11 emphasizes CDPR's commitment to only pursue a reduction of the 6 Exclosure if compatible with natural and cultural resources conservation, specifically the conservation of SNPL and CLTE, and consistent with the requirements of other programs. See Master Response 7: Reduction of Boneyard and 6 Exclosures.

## MASTER RESPONSE 4: CONSISTENCY WITH THE COASTAL ACT

### Coastal Commission Review of CDP

It is not the purpose of the HCP or EIR to address California Coastal Act and CDP requirements of existing park operations. See EIR Volume 1 section 4.3.4 for a detailed evaluation of 4.3.4 of HCP new covered activities conformance with the California Coastal Act.

The Oceano Dunes District operates the Pismo State Beach and Oceano Dunes SVRA park units consistent with CDP 4-82-300, as amended, issued by the Coastal Commission. The CDP, first issued in 1982, and subsequent amendments have placed limits on park operations primarily through establishing interim daily vehicle use and camping limits and fencing along the riding area perimeter. In its July 2019 annual review of the CDP, the Coastal Commission staff recommended 15 new operational and short-term changes to CDP terms and conditions deemed necessary for compliance with the Coastal Act to be implemented through CDPR's proposed Public Works Plan (PWP). These recommendations are outlined in a July 2019 Coastal Commission letter to CDPR, which is attached to the Coastal Commission comment letter on the 2020 Draft EIR.

In its March 2021 review of CDP 4-82-300, the Coastal Commission staff recommended a series of changes to the CDP terms and conditions affecting park operations to address coastal resource concerns. Subsequent legal action occurred as described in Master Response 5: Public Works Plan. Since the court decisions on the proposed March 2021 CDP amendment, the Oceano Dunes District has reverted to operating under Amendment A5 of the CDP, which was approved in 2001. The 15 CDP conditions recommended by the Coastal Commission in 2019 are no longer relevant for the purposes of this EIR analysis on Coastal Act consistency. The Coastal Commission incorporated its comments on the 2020 Draft EIR into its comments on the 2025 Recirculated Draft EIR.

See Master Response 5: Public Works Plan for further discussion on a CDPR planning effort to address Coastal Commission concerns, including subsequent litigation.

### Environmentally Sensitive Habitat Areas (ESHA)

EIR Volume 1 section 6.3.3 evaluates the impact of proposed new project activities (section 2.4.2.2) on ESHA. The effects of existing activities on ESHA are discussed in EIR Volume 3 Appendix D. ESHA impacts from potential future activities identified in the HCP are discussed in cumulative impacts (EIR Volume 1 section 6.4). The EIR concludes that the project impacts and cumulative impacts on ESHA would be less than significant.

The USFWS is the regulatory authority under FESA Section 7 to assess impacts to critical habitat from all proposed ITP covered activities identified in the HCP. The EA for the Oceano Dunes District HCP concludes the impacts on critical habitat from all ITP covered activities, which includes the project activities evaluated in this EIR, would not be significant.

## MASTER RESPONSE 5: PUBLIC WORKS PLAN

### PWP Purpose and Process

A PWP is a vehicle for planning and regulation under Section 30605 of the Coastal Act. It allows public agencies such as CDPR to propose a specific set of projects in the Coastal Zone that the Coastal Commission certifies as consistent with the Coastal Act. This enables agencies to implement the identified public works projects without submitting multiple CDP applications.

The intent of the PWP for Pismo State Beach and Oceano Dunes SVRA would be to provide a comprehensive development plan and obtain one approval from the Coastal Commission to avoid multiple CDP applications. CDPR prepared a draft PWP concurrently with the 2020 Oceano Dunes District HCP. While the HCP and PWP documents had overlapping timelines of preparation, the two documents are separate planning efforts with different purposes.

The draft PWP addressed Coastal Act compliance issues identified by the Coastal Commission as well as provided for the long-term management needs of the park units by identifying specific improvement projects and future development projects.

The draft PWP was released for public review on December 31, 2020. The Coastal Commission received public comments on the draft PWP in March 2021 and subsequently issued a unilateral permit amendment that ordered CDPR to shut the park down in three years. Litigation ensued, and CDPR put the draft PWP on hold. In July 2023, the trial court found the Coastal Commission exceeded its authority in issuing an amendment prohibiting OHV recreation. The California Court of Appeals affirmed the lower court ruling in March 2025.

The PWP process remains on hold.

### HCP Inclusion of Draft PWP Projects

Several projects described in the draft PWP (AECOM 2020a) are included in the HCP as covered activities, including Pismo Creek Estuary seasonal floating bridge (CA-41), Limited Trail Riding (formerly 40 Acres Trail Riding; CA-42), Safety and Education Center kiosk replacement (CA-43), and Oso Flaco boardwalk replacement (CA-48). There are also projects in the draft PWP that are not identified in the HCP, such as the Oceano Campground Campfire Center replacement, because they are projects with an uncertain time frame.

If new projects from the PWP are brought forward for implementation, CDPR would evaluate the new activity to assess the need for ITP authorization and incorporation into the HCP via an amendment. A small project from the draft PWP may be conducted under a finalized HCP and ITP as a special project (CA-49) and may not require an HCP amendment if the project involves only minor disturbance, impacts would be fully avoided or offset by implementation of AMMs, and no new impacts, such as an increased risk of take of covered species would occur. However, draft PWP projects on the scale of the Oso Flaco campground/day use area would not be covered by the HCP without an HCP amendment. Such projects are neither proposed at this time nor considered by this EIR.

Including a draft PWP project in the HCP as a covered activity does not commit CDPR to approving or otherwise authorizing the project or negate the requirement for CDPR approval of the project to be subject to CEQA review.

## MASTER RESPONSE 6: CEQA BASELINE AND SCOPE

### Baseline Conditions

The environmental setting used as baseline comprises the physical environment conditions as they exist in the vicinity of the project (CEQA Guidelines section 15125(a)(1). This environmental baseline, i.e., existing conditions, is the basis for determining the significance of project impacts. Existing conditions include all ongoing park operations and management and associated environmental effects that pre-date the HCP project proposal.

Agencies have some discretion to establish the timeline used for the environmental baseline, but an EIR normally describes as baseline the existing conditions as of the time the notice of preparation is published. Selecting a baseline absent of recreational uses and implementation of the conservation program would not represent environmental conditions as they presently occur and have been occurring for decades. Although the formal HCP process began in 2001, the environmental review of the HCP under CEQA could not begin until the Draft HCP was well developed. This did not occur until the NOP was released in 2018. It is appropriate to establish the environmental baseline as the time when the CEQA review started, not when the HCP preparation started. Additionally, environmental conditions occurring during an unprecedented park closure due to Covid-19 and temporarily modified in response to litigated and now invalid permit conditions are not representative of conditions occurring under normal park operations and are not an appropriate environmental baseline.

Existing park operations are lawful activities that do not require a new approval or environmental review to continue. The ITP does not authorize existing uses but rather provides a basis for FESA compliance for otherwise lawful activities.

**Existing Uses in Baseline**

As discussed in the EIR and HCP (see EIR Volume 1 section 8.2 and HCP section 4.11.1.1), motorized recreation has been occurring at Oceano Dunes for over a century, since well before the area became a State Beach and SVRA. The long history of intensive recreation is substantiated by numerous CDPR records and other sources, including the 1975 Pismo Dunes General Development Plan (CDPR 1975, p. 21), which states, “Pismo Beach is among the most popular units of the State Park System with an annual attendance of more than two million visitors.” The General Development Plan is just one of many sources documenting that high level use was occurring in the early 1970’s – over fifty years ago. The General Development Plan (p. 22) also presents a vehicle count based on holiday weekend aerial photos taken in 1974. Roughly 3,700 vehicles (July 4th weekend) and 4,300 vehicles (Memorial Day weekend) of all types were present on the beach and dunes. These total numbers are similar to the daily vehicle use limits established in 1982 by CDP 4-82-300-A5 (2,580 street-legal vehicles, 1,000 street-legal vehicles for camping, and 1,720 OHVs).

Selecting a baseline devoid of these recreational uses and related park operations and their associated effects on resources, as some commenters have suggested, would not represent environmental conditions as they presently occur and have been occurring for decades, and it would be difficult to determine what conditions were like in the HCP area before OHV use started. There are no records of biological surveys or species present before that time. It is neither feasible nor necessary to use a time over a hundred years ago as an environmental baseline, which would not reflect current conditions and would not be consistent with CEQA. It is appropriate to establish the environmental baseline as the uses and conditions in existence for decades within the HCP area at the time CEQA review started and that are anticipated to continue into the foreseeable future. The EIR and HCP acknowledge the interim changes to operations (e.g., closures) that occurred due to Covid and litigation, but as described in both documents, those changes were temporary and do not reflect conditions occurring under normal park operations over the past two decades or the foreseeable future and are not considered by CDPR to be an appropriate environmental baseline.

EIR Volume 3 Appendix D and Chapter 4 of the HCP do acknowledge and describe in detail the effects of ongoing park operations on the HCP Covered Species and other resources because

these effects are part of the affected environment. The majority of AMMs included in the HCP have been developed by CDPR over time to address those effects.

The EIR uses an accurate, existing environmental setting as the basis for assessing the significance of project impacts. CEQA requires the evaluation of project impacts based on the difference between existing conditions and new conditions resulting from a project. It is therefore inappropriate to attribute the environmental effects of ongoing activities as new project impacts. There is no nexus to require a project to mitigate existing environmental conditions that it did not create. It is not the purpose of an HCP to remediate and restore the natural environment to some less-disturbed time in the past.

**Species Management in Baseline**

Environmental conditions for covered species, and especially SNPL and CLTE, have improved in the intervening years from 2001 to 2025 while the HCP was being prepared due to implementation of riding restrictions and development of the conservation program documented in the HCP. Thus, the EIR does not use an artificially degraded environmental setting to conclude that project impacts are not significant. Refer to Master Response 1: HCP Purpose and ITP Issuance Requirements on how covered species populations have been maintained or increased since the HCP was being developed.

Using the existing conditions as a baseline of analysis does not set an artificially low standard for species management and habitat conservation and restoration. The HCP goals are consistent with the purpose of an HCP (see Master Response 1: HCP Purpose and ITP Issuance Requirements) and CDPR's mission, which is not to restore Oceano Dunes to conditions before there were human impacts but to provide for conservation and continued recreation (see Master Response 3: HCP with CDPR Mission and Mandates regarding accommodating recreation and conservation and EIR Volume 1 section 2.2.1).

The EIR uses the environmental setting described above as the basis for assessing the impact significance of the proposed project. That setting does not include year-round breeding exclosures because, other than the limited exception discussed above, the exclosures have not been and are not proposed to be operated year-round. CEQA requires the evaluation of project impacts based on the difference between existing conditions and new conditions resulting from a proposed project. It is not appropriate to attribute the environmental effects of ongoing activities as new project impacts; nor is it necessary to treat temporary changes to operations as if they are part of the permanent baseline. Further, it is not the purpose of an HCP to remediate and restore the natural environment to a less-disturbed point in time but rather to address take caused incidental to otherwise lawful activities as described in Master Response 1: HCP Purpose and ITP Issuance Requirements.

Park management documented in the HCP and this EIR, including the conservation program, has improved environmental conditions for covered species in the years that CDPR has been preparing the HCP. Using these long-term park operations, including seasonal exclosures, and contemporaneous SNPL and CLTE breeding and population data establishes an appropriate baseline for analysis.

**Vehicle Crossing of Arroyo Grande Creek (CA-40)**

Some commenters expressed concern about the impacts of vehicle crossing of Arroyo Grande Creek on steelhead or tidewater goby. Vehicle crossing of creeks (CA-40) is not a new activity proposed for approval. Impacts to Arroyo Grande Creek resources due to vehicle crossings are

effects of the existing park operations and are baseline conditions. Biological effects of existing park operations are described in EIR Volume 3 Appendix D. It is outside the purview of this EIR to analyze impacts to existing park operations.

Steelhead is not a covered species in the HCP. CDPR considered information presented in public comment on steelhead migration at low flows and information from Passive Integrated Transponder (PIT) tagged steelhead in San Luis Obispo Creek. After reviewing this new information and in consideration of the analysis included in EIR Volume 1 section 6.2.3, CDPR comes to the same conclusion that the likelihood of take of steelhead is negligible and no further analysis on this biological impact is warranted. This is consistent with the determination by NOAA Fisheries that covered activities are not anticipated to result in take of steelhead. CDPR's determination is based on substantial evidence as outlined in the HCP and EIR and in consideration of new information that was presented during public comments on the EIR (see comment A2-10). The EIR does assess the potential for new proposed activities to impact steelhead (see Volume 1 section 6.2.3) and concludes adverse impacts would not occur.

CDPR prohibits creek crossing under high flow conditions, and signage is posted accordingly. The creek may be safely crossed during low flow conditions without risk to tidewater goby. A maximum of 5 acres of tidewater goby habitat may be temporarily affected by motorized vehicles driving through suitable habitat (HCP Map 30) if the ponded areas shift. See HCP section 4.8.1.5.1 regarding existing effects of vehicle creek crossing on tidewater goby, and HCP Table 5-7 regarding AMMs for tidewater goby.

See EIR Volume 1 section 9.1.3 and Master Response 14: Discussion of Alternatives regarding consideration of alternative access to avoid vehicle crossing of Arroyo Grande Creek.

**CEQA Scope**

The CEQA project under review is limited in scope to the eight new covered activities identified in the EIR Volume 1 section 2.4.2.2, which are discretionary actions proposed by CDPR (SNPL chick and egg capture for relocation if observed threatened by non-covered species management activities [CA-12b]; stranded tidewater goby salvage [CA-13]; SWPT and WSF monitoring [CA-14]; dune slack restoration [CA-16]; invasive aquatic species predator control [CA-17]; mechanical trash removal [CA-21]; reduction of Boneyard and 6 exclosures [CA-50]; and CDPR use of unmanned aerial systems [UAS; CA-52]), and associated new AMMs (EIR Volume 1 section 2.4 and section 3.1, Step 4). Existing park management operations described in the HCP are not subject to CEQA review. Likewise, potential future park management actions that CDPR may consider in the future are not new actions subject to CDPR approval and CEQA environmental review at this time. CEQA does not require that alternatives be considered for non-project actions.

Future changes to park operations listed in EIR Volume 1 section 2.4.2.3 (CA-12b, CA-15, CA-28, CA-41, CA-42, CA-43, CA-44, CA-48, and CA-49) may be contemplated by CDPR. These potential future changes are not part of the environmental baseline and are not immediately proposed. Future changes are considered in this EIR under cumulative impacts (EIR Volume 1 section 3.3.3).

The EIR addresses new actions that are proposed for implementation. As discussed in the EIR Introduction, Project Description, and Methodology, the EIR does not address existing activities authorized by CDPR (baseline conditions) or foreseeable future activities which are not presently proposed (cumulative impacts) for authorization by CDPR.

The EIR covers the action proposed by CDPR, which is to approve the HCP in pursuit of the ITP and to implement specific project activities defined in EIR Volume 1 section 2.4.2.2 described above. Issuance of an ITP is a federal action, and USFWS has prepared an Environmental Assessment to comply with NEPA. The NEPA document as well as the USFWS internal Section 7 consultation will be the basis for approving an ITP.

## MASTER RESPONSE 7: REDUCTION OF BONEYARD AND 6 EXCLOSURES (CA-50)

### Rationale of Proposing Exclosure Reductions

CDPR proposes via the HCP to reduce the seasonal Boneyard Exclosure and 6 Exclosure (CA-50), striking a balance between resource conservation and recreation opportunity (see Master Response 3: HCP with CDPR Mission and Mandates). The HCP provides decades of data demonstrating the success of the conservation program in stabilizing SNPL and CLTE populations within the Oceano Dunes park units. In an effort to restore reduced recreational opportunity, CDPR proposes the reduction of the 6 Exclosure if resource conservation targets can be met as described in HCP section 2.2.5.11.

The 2003 Sierra Club lawsuit and resulting Consent Decree (2005) extended the seasonal exclosure boundary north from Post 7 to Post 6 and resulted in increased protected nesting habitat and reduced acreage opened to recreation during the breeding season. The Consent Decree includes a statement that the HCP would support a northern seasonal exclosure boundary at Post 7. This stipulation memorialized CDPR's commitment to providing recreational opportunities in the area if compatible with natural and cultural resources conservation, specifically the conservation of SNPL and CLTE. Thus, if specific criteria are met (see HCP section 5.2.3), CDPR may approve the incremental reduction of the 6 Exclosure, and approximately 62 acres of current exclosure area may ultimately no longer be fenced. The HCP and ITP, and not the Consent Decree, would formally establish the location and operation of the seasonal exclosure northern boundary.

While the inclusion of CA-50 in the HCP is consistent with CDPR's commitment stated in the Consent Decree, CDPR does not claim the Consent Decree statement has the force of a court order or statute requiring the HCP to establish the northern seasonal exclosure boundary at Post 7.

The HCP recognizes Exclosure 6 is a highly productive breeding area for SNPL and CLTE. CDPR selected Exclosure 6 for reduction based on its contiguous location with the rest of the riding area as it was considered less impactful than bifurcating the Post 6 to Post 8 exclosure area. The 6 Exclosure is on the perimeter of the seasonal exclosure adjacent to the year-round riding area to the north (Post 5), which is heavily used for camping during summer months. The 6 Exclosure would provide an uninterrupted extension of the recreation space allowing for natural dispersion of the recreation. Selection of a different exclosure space such as maintaining 6 Exclosure but eliminating 7 Exclosure or 8 Exclosure would split the seasonal exclosure into two units with recreational use occurring in between and would be more impactful. Bifurcating the exclosure would intensify the exposure of nesting SNPL and CLTE to recreation impacts and could reduce the quality of remaining nesting habitat. Creating a narrower exclosure north to Post 6 would not open up shoreline area to camping but would expose a greater linear extent of protected nesting habitat to disturbance and potential take along the perimeter.

Exclosure 6 is located on flat shoreline acreage in high demand for camping use during summer months when park visitation is at its peak. This exclosure reduction would reduce congestion in a

heavily used area and have the benefit of improving coastal recreation opportunity (EIR Volume 1 section 8.3.2).

**Criteria for Reduction of Exclosures**

See Master Response 1: HCP Purpose and ITP Issuance Requirements for discussion of species targets for reducing the 6 Exclosure. Species targets are based off over 25 years of monitoring data. Also see Contribution Toward Species Recovery in Master Response 1.

The 6 Exclosure reduction would be implemented incrementally and only if SNPL and CLTE targets and other criteria are met and sustained. The opening of 62 acres in 7.5-acre increments over a minimum of 8 years is a slow and cautious approach that minimizes the risk to SNPL and CLTE from loss of protected nesting grounds while allowing CDPR to test how expanded recreational acreage impacts SNPL and CLTE populations. As stated in HCP section 5.2.3, if the remaining protected area fails to meet the criteria listed for either species as the 6 Exclosure is reduced, the exclosure would be restored in the following breeding season in consultation with the USFWS.

**Impacts to SNPL and CLTE**

The EIR determination of less-than-significant impact on CLTE and SNPL is based on adherence to specific target criteria to demonstrate a stable population, implementation of the AMMs, and with evidence from the conservation program. The conservation program has been in place in a similar form to that proposed in the HCP for over two decades and has been sufficient to support a stable population of these covered species while OHV use and other recreation occurs adjacent to protected nesting space. Program results are documented in the population data collected over the last 25 years.

AMMs have been proven effective at minimizing take and providing protection to adults and chicks during the breeding season. AMMs are implemented specifically during the breeding season to protect nests and chicks. An extensive list of SNPL and CLTE AMMs apply to CA-50 (see HCP Tables 5-2 and 5-3, respectively). Further, the Post 6 Exclosure fencing boundary would be restored if the reduction results in a drop in target numbers.

The EIR concludes that, because there is no significant impact, mitigation is not required to offset the reduction in protected breeding habitat, or to mitigate impacts to ESHA and federally designated critical habitats.

Specific impacts to SNPL and CLTE raised in the comments are discussed in detail below.

**Loss of Protected Nesting Habitat**

As stated in the HCP and EIR, the loss of the 6 Exclosure and East Boneyard Exclosure will result in a loss of seasonal protection of up to 109 acres (or approximately 1/3) of the 368-acre seasonal exclosure (300 acres in Southern Exclosure and 68 acres in Oso Flaco Exclosure). Although not all of this habitat is considered high quality habitat, the entire 62 acres of the 6 Exclosure is considered high quality “primary” habitat (i.e., it provides all of the necessary physical and biological features to support behavioral activities such as breeding, foraging, and roosting). However, the East Boneyard Exclosure is almost entirely located in habitat that is not considered high quality habitat since it lacks all or some of the physical and biological features to support breeding, foraging, and roosting, i.e., the area is “tertiary” habitat. As a result, only approximately 62 acres (or approximately 1/6) of the breeding habitat that would no longer be

seasonally protected is high quality. EIR Volume 1 sections 6.3.2.1 and 6.3.2.2 acknowledge and assess the impact of the loss of protected high-quality nesting habitat.

As described above and in the EIR, the 6 Exclosure provides protected high-quality nesting and foraging habitat. From 2005 to 2023, between 25 and 97 of the known location SNPL nests (i.e., 24 to 46 percent of the total SNPL nests in the HCP area) have been established in the 6 Exclosure annually. It is acknowledged that a slow reduction of the 6 Exclosure, in conjunction with buffers, bumpouts, and single-nest exclosures for SNPL and CLTE that nest outside of protected areas, would neither replace nor fully offset the removal of protected nesting and foraging habitat but would protect the breeding population and nesting production rates. Further, the AMM requiring a reinstatement of the 6 Exclosure if success criteria are not met would restore, either in part or whole dependent upon the level or reinstatement, protected prime shoreline habitat. Further, the HCP includes population and reproductive thresholds for SNPL and CLTE, whereby if the population size or reproductive rate falls below the threshold, additional management actions would be implemented. It is in consideration of all AMMs and the established success of the conservation program, that the EIR concludes that impacts to nesting SNPL and CLTE would be less than significant.

Under normal operations for the past two decades, the seasonal exclosure is not in place during the winter season; therefore, a reduction in the seasonal exclosure acreage would not impact habitat for wintering birds, including SNPL. See Master Response 6: Baseline and Scope.

**SNPL and La Graciosa Thistle Critical Habitat**

The 6 Exclosure comprises 62 acres of critical habitat; the East Boneyard Exclosure does not have critical habitat. The 6 Exclosure would continue to be closed to motorized vehicles during the SNPL and CLTE breeding season until the biological criteria outlined in Chapter 5 of the HCP are met, along with other operational and regulatory considerations, and the 6 Exclosure can be reduced by 328-foot increments. Ultimately, approximately 62 acres of critical habitat could once again be open to motorized recreation year-round as a result of removing the East Boneyard Exclosure and 6 Exclosure.

Year-round recreational use in the 6 Exclosure reduction area may reduce the quality of designated SNPL critical habitat for nesting or wintering activities. Of the three physical and biological features identified in critical habitat unit CA 31, areas of barren to sparsely vegetated terrain and areas of sandy beach above and below the high tide line with occasional surf cast wrack supporting small invertebrates would be affected where protective fencing is no longer in place.

SNPL may continue to use areas that are heavily used by humans, but productivity may be limited, foraging areas reduced, and/or frequent disturbance of birds may occur. Though heavy recreational use had long been occurring within the HCP area at the time critical habitat was designated, the Revised Designation of Critical Habitat for the Pacific Coast Population of the Western Snowy Plover; Final Rule, included the HCP area. In including the SVRA, USFWS recognized CDPR's intensive management of the habitat and difficult balance between the SVRA use mandate and species conservation (USFWS 2012b).

This intensive management would continue with the reductions of the 6 Exclosure in 328-foot increments, although SNPL use of the area may change. Nesting SNPL would continue to be protected in these areas; however, foraging areas may be reduced. While recreational activities and reduction of the seasonal exclosure would reduce availability of nesting and foraging habitat,

these incremental reductions would not take place unless biological success criteria are met and maintained for both SNPL and CLTE, as mentioned above and in Chapter 5 of the HCP. If exclosures are reduced, changes to critical habitat at Oceano Dunes could be noticeable, but implementation of the conservation program to meet these criteria would preserve the overall functionality of critical habitat at Oceano Dunes as an important breeding and wintering area. Consistent with this functionality determination, the EIR concludes that this impact is less than significant.

La Graciosa Thistle critical habitat overlapping with the Boneyard Exclosure area as described EIR Volume 1 section 6.3.2.13 and shown in EIR Figure 6-8. The HCP (section 4.11.3) indicates that critical habitat areas outside of the vegetation islands do not currently contain the physical and biological features for La Graciosa thistle in appropriate quantity and spatial arrangement necessary to provide the features essential to the conservation of La Graciosa thistle. The East Boneyard Exclosure has typically been open to motorized recreation five months out of the year and the EIR concludes that opening it year-round would not significantly exacerbate impacts to La Graciosa thistle critical habitat.

The USFWS is the regulatory authority under FESA Section 7 to assess impacts to SNPL and La Graciosa thistle critical habitat from all proposed ITP covered activities identified in the HCP. The EA for the Oceano Dunes District HCP concludes the impacts on critical habitat from all ITP covered activities, which includes the project activities evaluated in this EIR, would not be significant.

The USFWS considers adverse impacts to critical habitat when making its findings of significant impacts. An assessment of impacts to critical habitat is included in the EA. The USFWS concluded that although critical habitat would be impacted, the overall functionality of critical habitat would be preserved with the implementation of AMMs and adaptive management.

**SNPL Breeding Populations and Overcrowding**

The HCP does not propose reduced conservation or a reduction in the contribution of the SNPL breeding population in the HCP area to the Recovery Unit 5 population. The HCP acknowledges the importance of the Oceano Dunes breeding success contribution toward the SNPL population in Recovery Unit 5. HCP Table 3-3 provides range-wide population data since 2002. Over two decades of data show there are yearly fluctuations in the number of breeding adults and nesting success including consecutive years of downturns and upswings. Population fluctuations within the HCP area and within the broader recovery unit are a normal part of the species' ecology.

Conservation and recovery of SNPL does not singularly rest on CDPR management of the HCP area. CDPR is one of many landowners with SNPL populations within Recovery Unit 5. Under CDPR management, the SNPL population has grown from 32 breeding adults and 35 fledglings in 2002 to 232 breeding adults and 231 fledglings in 2023 (HCP Table 3-8). This change represents over a 500 percent increase in breeding adult SNPL in the HCP area. In addition, from 2002-2023, the average annual SNPL chick fledged per breeding male is 1.45, which exceeds the recovery target that the USFWS established for the species.

The proposal to slowly reduce protected nesting acreage by 7.5 acres per year up to 62 acres over 8 years is not a proposal to reduce breeding numbers or to reduce conservation program elements (e.g., nest and chick protection, predator management, habitat enhancements, monitoring), although habitat enhancements would no longer occur in the exclosure reduction area re-opened to riding year-round. The breeding populations for both SNPL must be maintained at targeted

thresholds identified in HCP Table 5-7 and Table 5-8. Nest protection would still occur with the use of single-nest exclosure and bumpouts, as necessary. The proposal to reduce acreage recognizes the conservation program's success and establishes a framework for determining the point at which the program's success can afford a cautious reinstatement of recreational acreage consistent with the park units' designations.

The HCP and EIR acknowledge that the limitation of protected nesting acreage may limit the overall breeding capacity of the HCP area. The HCP area comprises park units that must be managed for both resource protection and recreational benefit (see EIR Volume 1 section 2.3.2). It is not a FESA or other requirement that CDPR manage the park unit for optimal breeding production or for SNPL recovery. See Master Response 1: HCP Purpose and ITP Issuance Requirements. This is part of the balancing of uses that CDPR engages in. See Master Response 3: HCP with CDPR Mission and Mandates.

Overcrowding associated with the removal of the exclosures is considered in EIR Volume 1 sections 6.3.2.1 and 6.3.2.2. Target populations associated with specific criteria must be met and sustained in order for the 6 Exclosure reduction to occur (see HCP section 5.2.3). Any reduction of the 6 Exclosure would occur incrementally, and all or portions of the exclosure would be restored should the criteria not be met and/or sustained.

**Nesting Outside of Exclosures**

SNPL and CLTE occasionally nest outside of the seasonal exclosures currently, and this may happen more if the 6 Exclosure is reduced or eliminated. Nesting outside of exclosures and any resulting effects have been considered in the HCP and EIR and are addressed by AMMs including, but not limited to, installing single-nest exclosures or bumpouts around any SNPL or CLTE nest in the open riding area. Data collected in over two decades of management show no discernable difference in nest success or fledge success for nests in single-nest exclosures or bumpouts.

Although single-nest exclosures can increase the risk of predation, they are widely used tools to improve productivity in ground nesting birds (Deblinger et al. 1992, Estelle et al. 1996, Hardy and Colwell 2008, Barber et al. 2010, Gaines 2019). Ultimately, the effectiveness of predator exclosures varies with species flight response, exclosure design, and the community of predators in the area (see, e.g., Estelle et al. 1996, Barber et al. 2010). It is through years of adaptive management and knowledge of the species that CDPR has established a successful conservation program, including use of both single-nest exclosures and seasonal exclosures. CDPR will continue to guide management decisions, including the use of single-nest exclosures, using the best available science, knowledge of the species, and adaptive management.

**Reduction in Nest Buffering Distances**

Eliminating the East Boneyard Exclosure and 6 Exclosure could allow recreation to occur closer to those portions of the seasonal exclosure currently buffered by the presence of the 6 Exclosure and East Boneyard Exclosures (e.g., the northern boundary of the 7 Exclosure and the eastern boundary of West Boneyard).

The West Boneyard area of the Southern Exclosure has not supported breeding CLTE in over a decade; CLTE would thus not be expected to be affected by eliminating the East Boneyard exclosure.

Removal of the East Boneyard Exclosure removes a buffering distance of at least 500 feet to nesting locations in West Boneyard, potentially reducing the quality of SNPL nesting habitat and reduced nesting attempts in West Boneyard. Similarly, reduction of the 6 Exclosure reduces the buffer distance to nest sites further within the Southern Exclosure (e.g., 7 Exclosure). However, SNPL seem less sensitive to buffering distances from human activity in selecting nest site locations. SNPL nests are annually established along the northern fencing limit of 6 Exclosure adjacent to the active open riding and camping area and at densities commensurate with or higher than the well buffered interior of the exclosure area. In addition, AMMs such as no disturbance buffers and bumpouts, which provide buffers from recreation activities, provide an adequate buffer around nests in these areas. As a result, the quality of remaining habitat within the Southern Exclosure is not expected to be reduced by HCP covered activities.

Although opening East Boneyard would remove a barrier to motorized traffic during the nesting season, the Oso Flaco fence at the south end of East Boneyard would be moved, as necessary, to ensure that public access to South Oso Flaco from the former East Boneyard Exclosure would be restricted. Pedestrians would be able to access Oso Flaco through this area during the non-nesting season. The potential impacts of reopening East Boneyard area are acknowledged and analyzed in the EIR and SNPL and CLTE take analysis (HCP sections 4.3.1.5.11 and 4.4.1.5.11 and EIR Volume 1 sections 6.3.2.1 and 6.3.2.2).

**Displacement or Discontinued Use**

The incremental reduction of the 6 Exclosure is unlikely to cause SNPL, CLTE, or other migratory birds to discontinue use of the nesting area or the HCP area in general. SNPL and CLTE are capable of small movements of nesting sites based on changes in conditions (both natural and anthropogenic). The HCP area has ample evidence that nest sites for SNPL and CLTE individuals can move during and between seasons while staying within the HCP covered lands. Nesting occurring in the unfenced exclosure reduction area would be protected through bumpouts or single-nest exclosures as described above in Nesting Outside of Exclosures. The reduction in the 6 Exclosure would occur gradually in small increments that can be reversed if population targets are not sustained. The comments submitted provide no evidence that the reduction in seasonal fencing will cause SNPL or CLTE to abandon nesting sites or the HCP area in general, but rather the site-specific information shows that these birds will adjust their nesting patterns based on small changes to site conditions and other factors.

## MASTER RESPONSE 8: DUST CONTROL PROGRAM (CA-44)

Comments received on the EIR air quality analysis directly or indirectly reference, derive information from, or otherwise relate to the past and/or present status of the Oceano Dunes SVRA Dust Control Program, specifically:

**Requirements of SOA 17-01**

EIR Volume 1 sections 5.1.3.2 and 5.1.4 include a detailed description of San Luis Obispo County Air Pollution Control District (SLOACPD) Rules and Regulations, including Rule 1001, Coastal Dunes Dust Control Requirements, and SOA 17-01, respectively. In particular, section 5.1.4 provides a summary of how the SOA's emission reduction and Annual Report and Work Plan (ARWP) requirements have changed between September 2017 and October 2025. This summary explains that, in October 2022, the SLOAPCD Hearing Board made significant modifications to the mass emissions and concentration reduction requirements from the original 2018 SOA and the 2019 SOA amendments that had formed the basis for the Dust Control

Program's 2019 – 2022 ARWPs. The October 2022 modifications resulted in an entirely new and different "excess emissions" framework with new and different modeling methods and a new approach to evaluating compliance with the SOA's emissions reduction requirements that is not directly comparable to how compliance with SOA was evaluated prior to October 2022. Accordingly, the EIR's analysis of air quality impacts is now based on the SOA's requirements as of October 2025. SOA modeling methodology and results that were in effect at the time the 2020 EIR was published are no longer germane to the analysis of the project's air quality impacts.

**The Nature and Source of Dust Generated in the HCP Area**

EIR Volume 1 section 5.2.3 includes a summary of the report, "Oceano Dunes: State of the Science." This report was independently prepared by the SOA Scientific Advisory Group (SAG) in 2023 to synthesize existing public information on key dust generation and dust control topics, including a study by Desert Research Institute (DRI) that documented a reduction in PM10 as a function of wind power density during the temporary closure of the SVRA in 2020 and studies by Scripps Institute of Oceanography concluding that sea salt and other sources of dust and particulate matter may be contribute to elevated PM10 levels downwind of the SVRA. Importantly, the SOA's excess emissions framework is based on the best available scientific information, as outlined in EIR Volume 1 section 5.2.3, and CDPR's 2024 and 2025 ARWP processes (see below). Thus, the EIR air quality analysis incorporates and considers recent scientific information related to the nature and source of dust generation at and in the vicinity of Oceano Dunes SVRA.

**SOA Compliance Status as of 2025**

EIR Volume 1 section 5.2.4 includes a summary of CDPR's most recently prepared ARWPs (the 2024 and 2025 ARWPs). This section includes detailed information on the SOA's excess emissions modeling methodology, as well as the most recent model results for the SOA's "pre-disturbance" and "current landscape" scenarios that are used to assess compliance with the SOA. As summarized in this section, the excess emissions modeling conducted for the 2024 and 2025 ARWPs indicates that Oceano Dunes SVRA was not in a condition of excess emissions and thus was in compliance with the SOA. These sustained results demonstrate that CDPR has made substantial progress towards improving air quality conditions downwind of the SVRA.

**HCP CA-50 Air Quality Impacts and Mitigation Measures**

EIR Volume 1 section 5.2.4 presents the results of an "EIR baseline" modeling scenario, prepared solely to inform the analysis of potential HCP air quality impacts based on the same SAG-recommended model used to estimate emissions and evaluate compliance under the SOA. Thus, the EIR analysis of air quality impacts specifically considers baseline information on dust emissions at Oceano Dunes SVRA. Furthermore, EIR Volume 1 section 5.3.2 presents the results of an "EIR Landscape" modeling scenario that specifically evaluates how $PM_{10}$ emissions could change under CA-50, which could modify surface emissivity conditions in the 47-acre East Boneyard Exclosure area and 62-acres 6 Exclosure area. This modeling scenario supports the estimation, comparison, and evaluation of $PM_{10}$ emissions levels at Oceano Dunes SVRA with and without the HCP's covered activities. Thus, the EIR analysis of air quality impacts explicitly quantifies and discloses the change in $PM_{10}$ emissions estimated to occur with the HCP. The modeling conducted for the EIR indicates Oceano Dunes SVRA may not be in compliance with the SOA due to increased emissivity associated with CA-50 and concludes that increases in emissions could lead to substantial pollutant concentrations and/or cause or contribute to exceedances of ambient air quality standards. To ensure that proposed CA-50 does not cause or

contribute to adverse changes in ambient air quality leading to violations of the NAAQS and CAAQS for $PM_{2.5}$ and $PM_{10}$, CDPR would implement Mitigation Measure AIR-1, which is described in full in EIR Volume 1 section 5.5. Mitigation Measure AIR-1 requires CDPR to coordinate with the SAG to ensure that potential surface emissivity changes, $PM_{10}$ emissions, and $PM_{10}$ concentrations associated with CA-50 are incorporated into the 2026, 2027, and 2028 ARWP processes and the excess emissions modeling conducted to show compliance with SOA 17-01, processes that require CDPR to coordinate with the SAG on, and obtain approval from the SLOAPCD for, planned dust control efforts. Planning for and incorporating these activities into the ARWP and excess emissions modeling processes, as necessary, would ensure that Oceano Dunes SVRA does not generate emissions in excess of naturally occurring emissions that contribute to downwind violations of state and federal $PM_{10}$ air quality standards.

**Relationship Between the Dust Control Program, HCP, and Other Regulatory Requirements**

CDPR's HCP and Dust Control Program are independent activities. The dust control measures analyzed in the HCP are analyzed for their take impact. New dust control activities are not proposed at this time, but some are included in the HCP as potential future activities and evaluated in the EIR for cumulative impacts where relevant.

The HCP's description of dust control activities (CA-44) describes that the Dust Control Program has been in effect since 2011 and has been required to meet SOA requirements since the initial SOA was adopted in 2017. The Dust Control Program is an ongoing, adaptive management program that has made substantial progress towards improving air quality conditions downwind of the SVRA. As required by the SOA, CDPR coordinates with the SAG and identifies and refines annual Dust Control Program activities for SLOAPCD review and approval as part of the ARWP Process. The HCP incorporates the continued implementation of the Dust Control Program as CA-44. The Dust Control Program, therefore, is required to comply not only with SOA requirements, but all applicable environmental documents (e.g., the Dust Control Program EIR) and regulations (i.e., Endangered Species Act, California Coastal Act). Similarly, HCP covered activities, such as CA-50, would need to demonstrate consistency with Dust Control Program and SOA requirements as part of the ARWP process. Thus, CDPR's HCP and Dust Control Program impose independent environmental planning, review, and compliance requirements that each program must consider.

Comments related to legal advisements and lawsuits do not constitute a determination of an actual violation of a law by state or federal court, and the EIR is not required to discuss the history of other agency permit actions within the ITP area. Similarly, comments on the implementation and approval of the Dust Control Program do not constitute a specific remark on the HCP or EIR.

## MASTER RESPONSE 9: PREDATION

Predator management at Oceano Dunes is an existing park operation included in the HCP. The SNPL and CLTE predator management program utilizes adaptive management to address predation impacts (i.e., monitoring and implementing a specific response targeting the observed condition; HCP section 2.2.2.1.2). CDPR's predator management strategy and methods have been successful at protecting breeding SNPL and CLTE. The methods implemented have increased the overall population (i.e., number of breeding adults) and reproductive success (i.e., number of fledglings per nesting pair) for both SNPL and CLTE in the HCP area. The predator

management program is reviewed annually by CDPR and USFWS, and changes are made as needed. Within the adaptive management approach, CDPR has the capacity to intensify a response to increased predation by increasing monitoring and using selective live-trapping for relocation or lethal removal. An expanded effort to address predation increase would rely on increased monitoring and frequency of implementation of these tools. The potential increase in predation caused by HCP activities can be met by the existing management program.

No new dust control activities are proposed by CDPR at this time, but some are included in the EIR as potential future activities and evaluated for cumulative impacts where relevant, e.g., EIR Volume 1 sections 6.4.1.1 and 6.4.1.2. The HCP includes a discussion of the impacts of increased predators from dust control activities on SNPL and CLTE (HCP sections 4.3.1.5.5 and 4.4.1.5.5). Existing Dust Control Program measures, including vegetation installed for dust control purposes, are part of the EIR's baseline.

The HCP and EIR acknowledge that at this time, it is not known whether the future dust control activities would increase predation on SNPL and CLTE. The mere presence of adjacent vegetation or perching habitat does not guarantee predation would occur in these areas. Both vegetated areas and predation on SNPL and CLTE are existing conditions in the HCP area. None of the proposed new activities are expected to increase predation on SNPL or CLTE and thus would not contribute to predation impacts, if any, from future dust control measures. New dust control activities could exacerbate SNPL and CLTE predation in the HCP area, but it is difficult to quantify to what extent any trends in SNPL and CLTE predation rates are correlated to the dust control activities rather than other factors. If SNPL and CLTE predation rates do increase, whether from dust control measures, another cause, or a combination of factors, the predator management program and/or remedial measures discussed in HCP section 6.5.17 are expected to address the issue (e.g., submitting a damage assessment and range of remedial actions to the USFWS within 60 days of problem discovery).

## MASTER RESPONSE 10: CALIFORNIA FULLY PROTECTED SPECIES AND NCCP

CDPR is preparing an NCCP to be submitted to CDFW to obtain an NCCP permit authorizing take of species listed under CESA, including species also designated as fully protected under the Fish and Game Code (see HCP sections 1.5.3 and 1.5.4). In addition to being a federally-listed endangered species, CLTE is both a state-listed endangered species under CESA and a fully protected species under the California Fish and Game Code. Because it is a fully protected species, incidental take of CLTE can only be authorized under the Fish and Game code via an NCCP. An NCCP has different requirements than an HCP to address the NCCP Act and the State's fully protected species statutes under the California Fish and Game Code. This is a separate process from the FESA compliance gained with the issuance of a federal ITP. The HCP process was well underway when CDFW determined that CDPR could pursue an NCCP. In 2017, CDFW, USFWS, and CDPR discussed preparing a joint HCP/NCCP. It was decided at that time that the HCP and NCCP timelines warranted separate processes; there is no legal requirement that an HCP and NCCP be combined. As such, the NCCP is being developed separately from the HCP and would have separate CEQA review.

The NCCP process has developed slowly given the need for CDFW and CDPR to assess components of the applicable issuance criteria and other issues, including the 2021 Coastal Commission permit amendment and subsequent litigation, which placed the NCCP process on hold. Considering the extensive AMMs developed for CLTE, e.g., nesting buffers, the EIR concludes the proposed new covered activities would minimize mortality and take and would not

create a potentially significant impact on CLTE. CDPR, in cooperation with CDFW, has prepared and is in the process of implementing the Biodiversity Management Plan, which includes recommendations for expanded protections of biological resources on an interim basis until an NCCP is prepared.

CDPR expects that the NCCP would be consistent with the HCP, though additional measures may be required to ensure the NCCP criteria are met. CDPR would seek to continue operations to avoid take of fully protected species during the development of an NCCP. Note that the Fish and Game Code (section 86) does not include "harm" or "harass" in the definition of take. Incidental take (e.g., mortality) of CLTE and other fully protected species is currently avoided through AMMs in consultation with CDFW. CDPR has an SCP and MOU to allow for take associated with recovery activities. See Table 6-2 for a summary of special-status animal species, including fully protected species, that could occur in the HCP area, and section 6.3.2 for discussion of potential impact to those species from proposed new activities. The HCP describes the potential for CLTE take from the covered activities, including new covered activities (see HCP section 4.4.2.1.2).

## MASTER RESPONSE 11: CLIMATE CHANGE AND SEA LEVEL RISE

The potential effects of climate change and sea level rise on coastal habitat within the HCP area are addressed in the HCP as a changed circumstance (HCP section 6.5.1).

Because of the high level of uncertainty of how natural communities and species will respond to climate change, remedial actions would be implemented through the adaptive management program (HCP section 5.6), consistent with the scope and extent of the AMMs and mitigation measures defined in the HCP (sections 5.3.1 and 5.3.2) and limited to the funding allocated for HCP implementation and adaptive management. Given the speculative nature of the potential effect of sea level rise on covered species habitat, the HCP provides language that is flexible and relies on the adaptative management program to address many of the impacts. In addition, CDPR has committed to working with the USFWS to implement appropriate measures to address loss of habitat. All changed circumstances in the HCP, including the actions to address the circumstance and the means of funding, were prepared in coordination with the USFWS to ensure that adequate funding is guaranteed to implement actions. CDPR strives to implement adaptation strategies while still allowing recreational activities to continue. See Master Response 16: HCP Funding for further information on funding.

## MASTER RESPONSE 12: MECHANICAL TRASH REMOVAL (CA-21)

### Need and Justification

Administrative changes of more trash collection sites, increased enforcement of anti-littering laws, increased penalties for littering, additional signage and/or public outreach regarding litter, and manual trash removal would help with trash but would not remove the debris that gets left behind and that is buried below the sand surface and not visible for manual removal. These measures would not achieve the objective of the raking, which is to remove trash and debris from open sand areas used by visitors.

The Department Operations Manual Beach Grooming Policy 0311.4.2.1 allows for "coastal districts to develop beach grooming strategies that are appropriate for the primary purpose for which the unit was established, the classification of the unit, the amount of public use the beach receives, and in consideration of potential impacts to natural resource values and processes."

CDPR is considering the use of mechanical trash removal for the purpose of removing debris from open sand areas that poses a hazard to visitors. With inclusion of mitigation, mechanical trash removal would be consistent with this policy.

**Environmental Impacts**

Mechanical trash removal is proposed in an area of shoreline that is subject to regular disturbance from motorized vehicles. A high level of recreation has occurred historically as is substantiated by numerous CDPR records and other sources. Vehicle use as an existing condition is the appropriate baseline environmental setting for evaluating the environmental effects of mechanical trash removal. See Master Response 6: CEQA Baseline and Scope, EIR Volume 1 section 8.2, and HCP section 4.9.1.1.

**Sensitive Habitat Area**

The EIR concludes that mechanical trash removal inclusive of proposed limitations would not degrade or substantially alter the characteristics of shoreline resources, which contribute toward sensitive habitat. This conclusion is primarily based on the fact that mechanical trash removal is only expected to impact bare, open sand areas already subject to intensive recreation, so there is little presence of critical resources (such as vegetation communities, covered plant or animal species, or their seed banks). Mechanical trash removal is not expected to adversely impact ESHA as described in Master Response 4: Consistency with the Coastal Act.

Potential impacts from CA-21 are described in EIR Volume 1 section 6.3.3 including altering sand composition and microtopography by raking and reducing organic surface materials. The area affected would be a 200-300 foot-wide, narrow swath of beach occurring between the active wrack line and foredunes. It is the beach sand composition that could be affected, not the dune composition, as no grooming is proposed in the dunes. In most cases, particular areas would be cleaned no more than twice a year, unless extenuating circumstances require additional mechanical trash removal (EIR Volume 1 section 2.4.2.2). Given the existing disturbance, alteration in microtopography is minor and would be restored to a natural condition through natural processes of tidal action and wind. While the rake tines may cause micro changes in beach surface topography, the sand displacement by tines would occur in small measure (measured by inches), be limited to the swath of the rake, and would not move large quantities of sand from one area to another. Beach landform would not be substantially altered. Organics would also be seasonally restored through tidal action.

Mechanical trash removal would occur in areas that are already impacted by recreation, including OHV use, which already disturbs the physical attributes of the dunes and beaches (Zielinski et al. 2019, Schooler et al. 2017). In addition, AMMs (SNPL AMMs 104-110 and CLTE AMMs 91-96) address concerns associated with mechanical trash removal by ensuring that activities do not occur where SNPL or CLTE are present and by limiting equipment operation to areas only above the highest tide, avoiding wrack and surf cast kelp, avoiding all live vegetation, and avoiding lagoons and flowing creeks.

Mechanical trash removal would not affect the active wrack where the majority of invertebrates are known to occur. As stated in the EIR and HCP, mechanical trash removal could remove scattered debris from the previous winter wrack line still present on the beach above the active wrack line. The importance of this habitat for beach invertebrates is unknown, but the HCP assumes that this could impact the invertebrate community and identifies SNPL AMM 111 to further study the potential effects and implement a corrective response. If CDPR finds a decline

in invertebrate numbers, additional measures would be implemented including, but not limited to, habitat enhancement measures and reduction in frequency of mechanical trash removal, and/or reduction in the locations where mechanical trash removal occurs. It is expected that invertebrates would recover over time from the effects of mechanical trash removal (Griffin et al. 2018, Defoe et al. 2008, Fanini et al. 2005, Gheskiere et al. 2005); therefore, should the CDPR study find a significant decline in invertebrates, modifying or eliminating mechanical trash removal per SNPL AMM 111 should allow for the reestablishment of the abundance and diversity of the invertebrate population.

**Other Methods of Trash Control**

CA-21 Mechanical Trash Removal is a supplement to, and not a replacement for, the ongoing trash control program within the HCP area. SNPL AMM 32 and SNPL AMM 33 are included in the HCP to avoid and minimize impacts to SNPL from trash in the HCP area. Since 2021, CDPR has deployed covered dumpsters that open from the side, which has been found to attract fewer gulls than the previous design.

## MASTER RESPONSE 13: LIMITED TRAIL RIDING (CA-42)

The Limited Trail Riding area (formerly referred to as “40 Acres”) area was once part of the active riding area within the SVRA. The area was closed to riding and vegetated starting in the 1980s to prevent sand movement into Oso Flaco Lake. At the time of its closure, the original plan was to reopen it to OHV use once the area was stabilized.

CDPR included the limited trail riding project in the HCP (CA-42; see HCP section 2.2.5.3) as a potential new covered activity that may be proposed for implementation during the HCP permit term. The project would comprise establishing approximately 2 miles of riding trail through the area. The trail may be designed as a dead-end with a turnaround, a loop, or through passageway between Boneyard and Maidenform Flats. This project is identified in the EIR (Volume 1 section 2.4.2.3) as a foreseeable potential future project and considered in cumulative impacts. See cumulative impact discussions, sections 5.4 and 6.4.1, respectively, in Air Quality and Biological Resources chapters of EIR Volume 1.

As conceptualized, CA-42 would involve developing the area with an approximately 2-mile trail affecting approximately 5 acres of dune vegetation. Although vegetation clearance would be required for trail construction, riding would be restricted to the trail and would not occur in vegetated areas or denude vegetation. No new staging areas would be required to support trail riding in the area.

The Limited Trail Riding area is located in the back dunes near Oso Flaco Lake and is outside of SNPL critical habitat and outside of suitable nesting, roosting, and foraging habitat for SNPL and CLTE. Potential impacts to SNPL and CLTE from potential trail development and riding in the Limited Trail Riding area are addressed in the HCP (Sections 4.3.1.5.3 and 4.4.1.5.3). SNPL and CLTE are not expected to utilize the area; therefore, opening this area to motor vehicles does not increase the risk of SNPL take. The HCP and EIR acknowledge the potential for vehicle strike of CLTE, but this event is considered very unlikely.

The Limited Trail Riding area is located near East Boneyard Exclosure, and a new trail in this area could increase OHV use near the East Boneyard Exclosure. As shown in HCP Maps 13b-d, CLTE have not nested in East Boneyard Exclosure since 2005, West Boneyard since 2009, and 8 Exclosure since 2016. East Boneyard has supported only 11 SNPL nests since 2005, and none

since 2019 (HCP section 4.3.1.5.11 and Maps 11b-d). The East Boneyard Exclosure is proposed for removal (CA-50). The Limited Trail Riding site is not directly adjacent to the West Boneyard Exclosure, leaving a buffer between the exclosure and limited trail riding area. In addition, the HCP AMMs include installing a bumpout, if necessary, to reduce disturbance to nesting SNPL and CLTE. As a result, impacts to nesting SNPL and CLTE from increased activity are not expected to differ from present. Potential impacts to covered species and critical habitat have been addressed by the implementation of standard pre-construction surveys and AMMs to minimize WSF take and provide a buffer to protect listed plants.

## MASTER RESPONSE 14: DISCUSSION OF ALTERNATIVES

### Purpose of EIR and HCP Alternatives

CEQA specifies that the purpose of the alternatives discussion is to describe a range of reasonable alternatives to a project or location of the project that would feasibly attain most of the basic project objectives but would avoid or substantially lessen any of the significant effects of the project, consistent with CEQA Guidelines section 15126.6(f). Alternatives do not need to be considered if they are infeasible, do not accomplish project objectives at least partially, or do not reduce a significant impact. Alternatives evaluated in the EIR do not need to be analyzed in the same level of detail as the proposed action. The level of detail provided is sufficient for identifying whether project impacts would be reduced or increased in comparison with the proposed action. CEQA does not require the benefits of rejected alternatives to be discussed. However, for this EIR, the biological benefits of the four considered alternatives are discussed (see EIR Voume 1 sections 9.2.1, 9.2.2, 9.2.3, and 9.2.4).

HCP alternatives differ from CEQA alternatives. HCP consideration of alternatives focuses more narrowly on alternatives that would avoid or minimize take of federally listed species under FESA, while CEQA alternatives would feasibly attain most of the basic project objectives while avoiding or substantially lessening any of the significant effects of the project. The HCP and CEQA document alternatives thus may not be the same.

### Range of Alternatives

A reasonable range of alternatives to be considered in an EIR is determined based on the need to reduce significant environmental impacts associated with the project. OHV use in the HCP area is an authorized recreational use and is permitted in OHV use areas as identified in the San Luis Obispo County LCP. The project activity being evaluated under CEQA is not the continuation of existing lawful use. Rather, it is specific new park management actions as described in EIR Volume 1 section 2.4.2.2 (i.e., CA-12b, -13, -14, -16, -17, -21, -50, and -52). It is the significant impacts caused by these actions and the need to reduce these effects that determine the appropriateness of alternatives.

### Alternatives Raised in Comment but not Considered

No OHV Alternative. A No OHV Alternative eliminating OHV use in the park was not considered in the EIR or HCP as a project alternative since the park is a SVRA established by the state legislature for the explicit purpose of providing an area for motorized recreation. In general, CDPR has taken a balanced approach between recreation and conservation in its HCP application. See Master Response 3: HCP with CDPR Mission and Mandates. Further, the HCP is not the appropriate planning process to consider long-term management decisions such as whether to reduce or eliminate OHV recreation. A No OHV Alternative would not meet the

statutory mandate of managing the unit under its current classification (PRC § 5090.14.1) and would result in a significant reduction in funds for the HCP area resources because OHV Trust Funds would no longer be available for the conservation program, park maintenance, visitor services, and other park activities.

Expanded Exclosures Alternative. Some comments requested consideration of an alternative that expanded the seasonal exclosures for nesting SNPL and CLTE. Birds are not confined to an exclosure and move about when foraging, nesting, or resting. CDPR will put additional AMMs in place if SNPL or CLTE nest outside the exclosure area, including erecting single-nest exclosures. The HCP includes an adaptive management program to evaluate the need for additional protection measures to address protection of the species from recreation and overcrowding.

CDPR is attempting to balance the need to manage natural resources at the SVRA and provide coastal recreation opportunity in keeping with its mandate. Nesting at South Oso Flaco is managed by leaving the shoreline open to pedestrian traffic and using symbolic fencing during the breeding season to close off areas where SNPL may nest, including the upper beach and dune habitat.

Aggression among SNPL has been observed in the seasonal exclosures as noted in the EIR discussion of exclosure reduction (CA-50) impacts (EIR Volume 1 section 6.2.3.1) and can be an indicator of overcrowded conditions. CDPR has proposed an adaptive management program to evaluate the need for additional protection measures to address protection of the species from overcrowding. However, a continuous enlargement of the exclosure to support an ever-increasing population of CLTE and SNPL is not the stated goal of the HCP and CDPR management of the SVRA and Pismo State Beach park units. The HCP is a conservation plan in support of an ITP application and is not a species recovery plan. See Master Response 3: HCP with CDPR Mission and Mandates for information on accommodating recreation and conservation and Master Response 1: HCP Purpose and ITP Issuance Requirements for information on contribution toward species recovery.

**Considered and Rejected Alternatives**

EIR Volume 1 section 9.1 presents considered and rejected alternatives.

Night Closure Alternative. The effects of night riding as an existing activity are addressed in the HCP and in EIR Volume 3 Appendix D, and AMMs such as protection of night roosting, seasonal exclosure protection of nighttime foraging, and dissemination of educational information and social media posts directed at park visitors are in place to reduce potential effects related to night riding. The HCP does account for potential take associated with night riding. In addition, the HCP addresses vehicle impacts to night roosting CLTE and includes AMMs to reduce any impacts. Finally, the HCP addresses impacts to CRLF from night riding and concludes that the likelihood of strike is very low. As a result, prohibition of night riding would not be necessary as a means of substantially reducing take of HCP covered species. Given that prohibition of nighttime riding is unlikely to substantially reduce environmental effects of the proposed new covered activities, poses funding and operational challenges as described in EIR Volume 1 section 9.1.4.1, and does not meet project objectives, the riding restriction was rejected from further consideration in the HCP. CDPR and CDFW are coordinating on further evaluation of night riding impacts in accordance with the Biodiversity Management Plan.

Changes in SVRA Access Alternative. This alternative is discussed in EIR Volume 1 section 9.1.3.2 and was eliminated from further consideration as it would not facilitate project objectives or reduce impacts of the proposed new activities. Vehicle creek crossing is not a new activity proposed for approval, and the HCP proposes no changes to vehicle crossing of Arroyo Grande Creek or associated biological resources. Existing effects are thus part of baseline conditions. See Master Response: 6 CEQA Baseline and Scope regarding inclusion of existing CAs as baseline. Existing effects from motorized vehicle creek crossings (CA-40) are described in EIR Volume 3 Appendix D and in the HCP, e.g., sections 4.6.1.5.1 and 4.8.1.5.1.

CDPR may consider a southern entrance to the SVRA in the future. If a southern entrance becomes feasible and is proposed, this could trigger an amendment to the HCP, if that effort resulted in changed conditions for the covered species. The approval process for a southern entrance is currently speculative and would be subject to separate CEQA review and permitting.

**Considered Alternatives**

Alternative 1: No Project. The EIR No Project Alternative (EIR Volume 1 section 9.2.1) identifies the alternative as "CDPR would maintain its current park operations and continue implementation of its current conservation program including its annual strategy to avoid take. Changes proposed by CDPR […] would not occur. The existing adaptive management process employed by CDPR would be kept in place. […] Future activities that may be proposed by CDPR, such as those identified in the HCP and in Table 2-4, that may require take authorization would require individual review and permitting by USFWS rather than occurring in one comprehensive review under the proposed HCP. CDPR would submit individual permit applications to USFWS as projects are proposed." The No Project Alternative was rejected because it was inefficient, did not protect resources as effectively as the Proposed Project, and failed to meet project objectives.

The impacts of ongoing park activities on fish and wildlife including take impacts that would continue under the No Project alternative are described in EIR Volume 3 Appendix D.

Alternative 2: Reduced Disturbance in Dust Emission Areas. This alternative would retain the 6 and East Boneyard exclosures and was rejected because the preferred alternative could meet conservation objectives of the HCP while better meeting project objectives of operating the covered park units in a manner that provides for public use and enjoyment. See also Master Response 7: Reduction of Boneyard and 6 Exclosures.

Alternative 3: Permanent Year-Round Exclosures. A Year-Round Exclosure would primarily be proposed for the purpose of providing shelter for wintering shorebirds, eliminating the effects of OHV recreation on SNPL and CLTE nesting habitat, and reducing dust emissions associated with recreational use of the riding area (EIR Volume 1 section 9.2.3). CLTE are not present during the winter months, and wintering SNPL disperse more widely along the park shoreline after the breeding season. Leaving the fence year-round does not change the pattern of winter dispersal into un-fenced areas and does not eliminate the potential risk for take to occur in the HCP area. The Permanent Year-Round Exclosures Alternative was rejected because the preferred alternative could meet conservation objectives of the HCP and mitigate potential increases in dust emissions without affecting recreation access.

Alternative 4: Reduced Vehicle Use Limits. A Reduced Vehicle Use Limits alternative was one of the considered and rejected alternatives in the EIR (see EIR Volume 3 Appendix B). It is

unclear what the biological benefits or the magnitude of those benefits would be under a reduced vehicle use scenario.

Under a reduced vehicle alternative, vehicle use will still occur, and the risk of potential take from vehicle strike exists. The risk exists whether there are 1,720 OHV (current CDP limit) or something much lower (e.g., 500 OHVs). While presumably the risk is lower with fewer vehicles, it cannot be stated with certainty that take would be reduced, especially because AMMs apply to all vehicles and HCP area visitors. As indicated by the fluctuating amount of injury and mortality (non-predation) compiled in the HCP (Tables 4-1, 4-2, and 4-4), there is no observed correlation between the number of vehicles operating in the SVRA and the number of incidental take incidents. For example, estimated adult and juvenile incidental take varied widely in the years 2014 – 2018, when visitation was consistently at allowable permit levels (HCP Table 4-1) and SNPL populations were consistently high (HCP Table 3-4). Further, estimated SNPL take in 2021 and 2022, when visitation was reduced in both total vehicle numbers and the extent of the area open to OHV recreation, was higher than in 2014 and 2015. Although anecdotal, the data indicates that multiple factors in addition to the number of vehicles affect incidental take. The HCP includes an adaptive management program to evaluate impacts from OHV activity and address any increased take, in coordination with the regulatory agencies, as necessary.

**HCP Alternatives**

FESA requires that ITP applicants specify in the HCP what alternative actions to the taking of federally listed species were considered and the reasons why those alternatives were not selected. HCPs generally include 1) an alternative that would reduce take below levels anticipated for the project and 2) a no action alternative in which no permit would be issued and take would be avoided. FESA does not require selection of one alternative over another. Rather, the USFWS evaluates whether the HCP meets ITP issuance criteria.

The *Habitat Conservation Planning and Incidental Take Permit Processing Handbook* (USFWS and NOAA Fisheries 2016) states that "The HCP must demonstrate that the applicant reasonably considered the alternatives to the proposed action and explain why the applicant did not select each alternative. These explanations do not have to justify impracticability of any alternative. The Services need to only to evaluate whether the applicant's explanations appear to be credible and reasonable…"

The HCP includes four alternatives: 1. No Action, 2. Maintain Northern Exclosure Boundary, 3. Increased Patrols and/or Staffing, and 4. Project-by-Project Permitting. The regulations do not require that the HCP include a specific number of alternatives to the taking (USFWS and NOAA Fisheries 2016). HCP Chapter 8 considers four alternatives that would likely reduce take and explains why the alternatives are not utilized.

HCP No Action Alternative. In the context of an HCP, "No Action" usually means the ITP is not issued, and the applicant does not proceed with the proposed project or continues with existing practices. While a No Action alternative may result in fewer impacts, it does not necessarily mean that no take occurs. For example, if the applicant continues existing operations as is the case for the Oceano Dunes District HCP No Action Alternative, take might still occur, but without the benefit of the mitigation measures proposed in the HCP. Although CDPR would continue to enforce regulations and implement AMMs in the absence of an ITP, the No Action Alternative was rejected in the HCP because it does not provide CDPR with the legal protection afforded by an ITP allowing continued operation of recreation activities in the HCP area (see HCP Section 8.2).

Maintain Northern Exclosure Boundary Alternative. This alternative was not selected because CDPR determined that the conservation program proposed under the HCP provides adequate measures to address the risks of reducing and eventually eliminating the 6 Exclosure (HCP section 8.3).

Increased Patrols and/or Staffing Alternative. This alternative was rejected because given the current staffing levels, increasing the number of staff and/or patrols adds additional cost without appreciably reducing species effects or improving outcomes (HCP section 8.4).

Project-by-Project Permitting. This alternative would be less effective at protecting covered species than a single, comprehensive program (HCP section 8.5). It offers no advantages over the Proposed Action. and was therefore not selected.

## MASTER RESPONSE 15: RECREATION IMPACT SIGNIFICANCE THRESHOLD

Lead Agencies have discretion to formulate their own significance thresholds. CEQA Portal Topic Paper: Thresholds of Significance (AEP 2016) states:

> Lead Agencies are responsible for determining the thresholds of significance for all documents they prepare. They can rely on several sources, including: Appendix G of the State CEQA Guidelines; CEQA's mandatory findings of significance (State CEQA Guidelines Section 15065); thresholds established by regulatory agencies; thresholds provided in General Plans or other local planning documents; or thresholds established by other agencies. For example, many jurisdictions rely on thresholds established by a local or regional air district when analyzing air quality impacts.
>
> Appendix G is the most common source, though Lead agencies are not required to use it and are free to develop their own thresholds. It is also important to note that an impact can be significant even if it is not covered by an Appendix G question.

In addition to the Recreation thresholds of significance in CEQA Guidelines Appendix G, CDPR determined the project would have a significant environmental impact related to recreation and public access in the project area if it would substantially limit, reduce, or interfere with established coastal recreational opportunities or public access (see EIR Volume 1 section 8.3.1). This additional recreation threshold is based on CDPR and Coastal Act regulations and policies that require public access and recreational opportunities in coastal areas, as well as regulatory requirements for recreational opportunities in SVRAs; see EIR Volume 1 section 8.1.

This additional recreation threshold and the fact that the HCP would have a beneficial impact on coastal recreational opportunity and public access do not conflict with CEQA. The EIR assesses the impacts of proposed new covered activities on the environment, which includes the impact on access to coastal recreation. Other potential project impacts are considered in the EIR (Volume 1) including Chapter 4 (Land Use Plans and Policies), Chapter 5 (Air Quality), Chapter 6 (Biological Resources), Chapter 7 (Cultural and Tribal Resources), and Chapter 10 (Other CEQA Considerations).

CEQA Guidelines Appendix G does not establish a definitive or exhaustive list of resources, impacts, or thresholds of significance that require evaluation and/or consideration under CEQA. For example, CEQA Guidelines section 15063 (f) states (emphasis added): "*Sample* forms for an applicant's project description and a review form for use by the lead agency are contained in Appendices G and H…*These forms are only suggested, and public agencies are free to devise their own format for an initial study.*" In addition, CEQA Guidelines section 15064(b) states, in

part (emphasis added), "The determination of whether a project may have a significant effect on the environment calls for careful judgement on the part of the public agency involved, based to the extent possible on scientific and factual data. *An ironclad definition of significant effect is not always possible because the significance of an activity may vary with the setting*." Finally, the Environmental Checklist Form contained in Appendix G to the CEQA Guidelines states (emphasis added), "*NOTE: The following is a sample form and may be tailored to satisfy individual agencies' needs and project circumstances…*The sample questions in this form are intended to encourage thoughtful assessment of impacts, and do not necessarily represent thresholds of significance."

CDPR did not invent a new category of recreational impacts; rather, it used its discretion as a Lead Agency to utilize a threshold tailored to the project area's existing environment as a coastal recreation resource and consistency with policies and regulations regarding public access and recreation. The OHMVR Division has previously used this significance threshold when evaluating the environmental effects of its Dust Control Program (2017 Dust Control EIR). As noted in the Dust Control Final EIR, this threshold of significance was defined after conducting research into the thresholds of significance used by other local agencies and the California Coastal Commission.

## MASTER RESPONSE 16: HCP FUNDING

Comment regarding the adequacy of HCP funding or availability of funding sources is a comment on the HCP characteristics and not a comment on the EIR environmental analysis. It is recognized that a lack of funding would hinder the implementation of adaptive management measures, which are relied upon heavily in the HCP, and that the estimated annual budget is a substantial commitment of state funds. As noted in the HCP section 7.3, "CDPR understands that failure to provide adequate funding and consequent failure to implement the terms of this HCP in full could result in temporary permit suspension or permit revocation." CDPR identifies its funding sources in HCP section 7.2 to demonstrate its ability to cover the costs of fulfilling the HCP obligations, including in the event of changed circumstances as listed in HCP section 7.1 Table 7-1.

ITP issuance criteria require that applicants assure funding for implementation of the conservation program since funding is necessary for successful HCP implementation. As a result, the USFWS cannot issue the ITP if funding is not adequately assured. In addition, since the HCP is the guiding document for the conservation plan to comply with FESA, the USFWS can revoke the ITP if funding is not assured and the HCP cannot be implemented as described. At that point, CDPR would not be authorized to take covered species, and incidental take would be in violation of FESA. See HCP section 7.

In the event of a changed circumstance, CDPR has discretionary power to reallocate funds already allocated to State Parks for other purposes, or CDPR can request a budget amendment through the Department of Finance and the state legislature (HCP section 7.3).

Monies deposited into the OHV Trust Fund are generated by user fees associated with OHV recreation, including fuel taxes from gasoline consumed during OHV recreation on public lands, OHV registration fees, entrance fees generated at SVRAs, and Interest and miscellaneous income (HCP section 7.2).

The HCP Handbook indicates that incidental take authorizations based on HCPs funded by annual appropriations can be made contingent on sufficient funding (USFWS 2016, page 11-19).

The USFWS is responsible for determining that CDPR demonstrates reliable adequate funding for the HCP effort to occur prior to issuing an ITP as noted in the ITP issuance criteria listed in Master Response 1: HCP Purpose and ITP Issuance Requirements.

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# CHAPTER 3 RESPONSES TO INDIVIDUAL COMMENTS

This chapter contains the written comments received on or related to the Recirculated Draft EIR during the extended public review period from November 24, 2025, through January 23, 2026. This chapter also provides a written response by CDPR, as the CEQA Lead Agency for the project, to each comment raising a significant environmental issue submitted on the Recirculated Draft EIR. References to the Master Responses in Chapter 2 are provided as appropriate.

CDPR received 92 written comments during the Recirculated Draft EIR review period, including 1 from tribal governments, 3 from public agencies, 10 from organizations, and 77 from individuals. In addition to written comment, CDPR received 1 oral comment from a member of the public at the January 13, 2026, public meeting held on the Recirculated Draft EIR as listed in Table 3-1. Each commenter and each specific comment was assigned an alpha-numeric identification number.

Individual comment text is presented verbatim below excluding footnotes, attachments, and formatting. See Chapter 5 for the original letters submitted.

**Table 3-1 Summary of Public Comments Received on the Recirculated Draft EIR**

| ID | Commenter (Agency / Organization) | Date |
|---|---|---|
| Tribal Government Comments | | |
| T1 | Northern Chumas Tribal Council | January 23, 2026 |
| Agency Comments | | |
| A1 | California Coastal Commission | January 23, 2026 |
| A2 | California Department of Fish and Wildlife, Central Region | January 30, 2026 |
| A3 | San Luis Obispo County Air Pollution Control District | January 23, 2026 |
| Organization Comments | | |
| O1 | Audubon California and, Morro Coast Audubon Society | January 22, 2026 |
| O2 | California 4 Wheel Drive Association, Inc. | January 23, 2026 |
| O3 | California Off-Road Vehicle Association | January 14, 2026 |
| O4 | Center for Biological Diversity | January 23, 2026 |
| O5 | EcoLogic Partners, Inc. (Gatzke Dillon & Balance LLP) | January 23, 2026 |
| O6 | Friends of Oceano Dunes | January 23, 2026 |
| O7 | Motorcycle Industry Council, Specialty Vehicle Institute of America, and Recreational Off-Highway Vehicle Association | January 23, 2026 |
| O8 | Oceano Beach Community Association)- | January 20, 2026 |
| O9 | Sierra Club, Santa Lucia Chapter | January 23, 2026 |
| O10 | Surfrider Foundation San Luis Obispo | January 21, 2026 |
| Individual Comments | | |
| I1 | Anderson, John | December 12, 2025 |
| I2 | Anderson, Judith | January 22, 2026 |
| I3 | Avril, Anne | January 23, 2026 |
| I4 | Bauer, Jennifer | January 13, 2026 |

| | | |
|---|---|---|
| I5 | Betty, Michelle | December 14, 2025 |
| I6 | Brophy, Heather | November 27, 2025 |
| I7 | Brotherton, Richard | December 13, 2025 |
| I8 | Brown, Wendy | January 20, 2025 |
| I9 | Campbell, Debra and Kenneth | January 13, 2026 |
| I10 | Chavez, Andrea | November 29, 2025 |
| I11 | Cimo, Bonnie | December 13, 2025 |
| I12 | Cody, Martha | November 28, 2025 |
| I13 | Davenport, Philip | January 8, 2026 |
| I14 | Edwards, Jeff | January 23, 2026 |
| I15 | Emanuel, Karen | November 24, 2025 |
| I16 | Farhar, John | December 14, 2025 |
| I17 | Han, G. | November 28, 2025 |
| I18 | Harris, Ed | January 22, 2026 |
| I19 | Hawkins, Anita | December 15, 2025 |
| I20 | Heckman, Diane | January 24, 2026 |
| I21 | Holstein, Glen | November 24, 2025 |
| I22 | Howell, Heather | January 21, 2026 |
| I23 | Hunt-Pierson, Lucy | November 29, 2025 |
| I24 | Hurt, Carla | January 22, 2026 |
| I25 | Infield, Maryan | January 22, 2026 |
| I26 | Johansen, Cinda | November 24, 2025 |
| I27 | Johnson, Kathy | December 13, 2025 |
| I28 | Kayaker paddler | December 13, 2025 |
| I29 | Kelly, Lisa Ann and Family | November 24, 2025 |
| I30 | Kempton, Karl | January 19, 2026 |
| I31 | Kidney, Margaret | December 14, 2025 |
| I32 | Kitman, Lorraine | December 15, 2025 |
| I33 | Kohler, Barbara | December 15, 2025 |
| I34 | Koppel, Cara | December 13, 2025 |
| I35 | Kuchins, D.M. | December 16, 2025 |
| I36 | Kudrna, Michael | December 13, 2025 |
| I37 | Landau, Douglas | December 1, 20205 |
| I38 | Lewis, Cheryl | December 19, 2025 |
| I39 | Lupec2a@icloud.com (Anonymous) | December 12, 2025 |
| I40 | McFarlane, Rebecca | January 13, 2026 |
| I41 | Midkiff, Linda | November 28, 2025 |
| I42 | Miller, Terese | January 22, 2026 |

| | | |
|---|---|---|
| I43 | Mintzer, Carole | January 22, 2026 |
| I44 | Mohle, Rob | January 16, 2026 |
| I45 | Moran, Linda | January 23, 2026 |
| I46 | Newell, Tom | December 13, 2025 |
| I47 | Ondrejka, John and Nancy | January 19, 2026 |
| I48 | O'Neill, Kathleen | December 14, 2025 |
| I49 | Owen, Ellie | January 23, 2026 |
| I50 | Palyok, Anne | December 13, 2025 |
| I51 | Perez Salazar, Juan Manuel | January 20, 2026 |
| I52 | Peters, Amy | December 14, 2025 |
| I53 | Porter, Charlie | December 15, 2025 |
| I54 | Rawls, Linda | December 16, 2025 |
| I55 | Righetti, Kristin | December 13, 2025 |
| I56 | Rosczyk, Mary Lou | December 1, 2025 |
| I57 | Ross-Leech, Diane | January 23, 2026 |
| I58 | Ross-Leech, Diane (public meeting) | January 13, 2026 |
| I59 | Schechter, Madeline | January 14, 2026 |
| I60 | Sharpe, Peggy | January 23, 2026 |
| I61 | Sherrie, Laurel | November 28, 2025 |
| I62 | Sherry (full name unknown) | November 24, 2025 |
| I63 | Sherwood, John | November 29, 2025 |
| I64 | Silas, Carolyn | November 28, 2025 |
| I65 | Smith, Julie & Ray | January 21, 2026 |
| I66 | Stiles, Kerry | November 25, 2025 |
| I67 | Telecetsy, A | January 22, 2026 |
| I68 | Toti, Rachel | January 15, 2026 |
| I69 | Turner, Donna | January 16, 2026 |
| I70 | Varni, Charles | January 9, 2026 |
| I71 | Venditti, Karen | January 22, 2026 |
| I72 | Victorino, Chris | December 14, 2025 |
| I73 | Webster, Mike | December 13, 2025 |
| I74 | Wheeler, Kelly | November 30 2025 |
| I75 | Williams, Darryl | December 13, 2025 |
| I76 | Woodbridge, Bill | November 24, 2025 |
| I77 | Zajac, Peter | December 15, 2025 |
| I78 | Anonymous | January 22, 2026 |

## RESPONSES TO TRIBAL GOVERNMENT COMMENTS

### 3.1.1 Comment Letter T1. Northern Chumas Tribal Council

#### Comment T1-1

The Northern Chumash Tribal Council writes to share our concerns regarding the recirculated draft EIR and draft HCP for snowy plovers and least terns within the Oceano Dunes area. We object to the HCP and draft EIR in their current forms.

Response to Comment T1-1

The comment expresses general opinion on the project. No specific comment is presented on the content of the HCP or analysis in the EIR. No response is required.

#### Comment T1-2

The Oceano Dunes are a sacred Chumash cathedral of life, and the area holds deep significance to the Northern Chumash Tribal Council. Chumash ancestors have historically been the stewards and guardians of this special area containing historic resources and the cultural heritage of our elders for preservation for our children and grandchildren. The Dunes sustain ecologically important species and support critical habitat. This abundance of resources accounts for the richness and cultural complexity of the Chumash Heritage. Given this critical importance, any plan for the area must include the highest possible level of protection to the broadest range of wildlife, habitats, communities, and cultural resources.

Response to Comment T1-2

CDPR engages in extensive resource management throughout the HCP area as documented in the HCP. CDPR SPRs and standard practices include outreach to tribal governments prior to work in areas that are known to be culturally sensitive to ensure cultural resources are protected. See EIR Volume 1 section 7.1.11 for standard practices concerning tribal cultural resources and SPRs in EIR Volume 3 Appendix B.

The USFWS is the regulatory authority under FESA Section 7 to assess impacts to critical habitat from all proposed ITP covered activities identified in the HCP. The EA for the Oceano Dunes District HCP concludes the impacts on critical habitat from all ITP covered activities, which includes the project activities evaluated in this EIR, would not be significant. See Master Response 7: Reduction of Boneyard and 6 Exclosures (CA-50).

#### Comment T1-3

We believe that the ocean is Grandmother Ocean, the earth is Mother Earth, and all inhabitants are our Relatives. We are guided by a deep obligation to take care of all Relatives. Natural resource protection is in harmony with our Chumash history of nurturing health and balance with all things. As stewards of the ocean and land, Chumash have been guardians of this region for many thousands of years. In the words of our former chair, Mr. Fred Collins, "[t]he Northern Chumash Tribal Council (NCTC) has spoken to the preservation of the Dunes for over 50 years, asking and pleading for actions that stop the destruction of the Chumash Culture, and Sacred Sites. To no avail. What we have got are: fences around visible Chumash Sites, fences that out-of-towners drive over, thinking it is funny to destroy Chumash Sacred Sites, trucks with 'Proud Boys' flags driving over our Sacred Sites with no care for the importance of Chumash Culture.

Response to Comment T1-3

The comment expresses concern over impacts to tribal cultural resources from existing park operations. The proposed new projects identified in the EIR Volume 1 section 2.4.2.2 (CA-12b, CA-13, CA-14, CA16, CA17, CA-21, CA-50, and CA-52) would not create new OHV access within known culturally sensitive areas. Cultural resource impacts of the project are addressed in EIR Volume 1 section 7.3.2.

CDPR acknowledges the commenter's concern and will continue to consult with tribes on preservation and protection of culturally sensitive sites and tribal cultural resources in the Oceano Dunes District.

**Comment T1-4**

The draft HCP and accompanying EIR fail to reckon with the cultural importance of this site, even as it underscores that the HCP area is "located within the Northern Chumash . . . territory" (page 7-8) and concedes that the area "has a high degree of sensitivity in terms of cultural and tribal cultural resources" (page 7-10).

Response to Comment T1-4

As noted, the EIR recognizes that the HCP area occurs within Northern Chumash territory and has a high degree of sensitivity. EIR Figure 7-1 provides a map of sensitive cultural resource areas. Project impacts to tribal cultural resources are addressed in EIR Volume 1 section 7.3.4 The EIR concludes that with SPRs and standard practices in place such as tribal consultation, monitoring by a cultural resource specialist, and avoidance of resources, impacts of project activities would be less-than-significant. CDPR consulted with the Northern Chumash Tribal Council regarding the proposed HCP in September 2025. The Tribal Council did not request further consultation.

**Comment T1-5**

Furthermore, the recirculated draft EIR and HCP do not adequately protect the ecological significance of the area.

Response to Comment T1-5

The comment makes a broad assertion regarding inadequate protection the ecological significance of the area but does not provide substantial evidence for CDPR consideration of how the EIR analysis is inadequate or how the HCP fails to adequately protect these ecological resources. No further response is required.

**Comment T1-6**

In 2020, the dunes were vehicle-free. During that time, ecological conditions on the dunes noticeably improved. The beach returned to its natural contours from tidal zones to foredunes. Wildlife presence expanding along the beach. Birds, like the black headed heron, were seen in greater numbers. Ospreys were seen at Arroyo Creek. Coyotes were seen during daylight. Hundreds of small clams were seen in the intertidal zone. Once vehicles were allowed back, the beach's contours were flattened and the wildlife fled or disappeared.

Response to Comment T1-6

The comment expresses personal observations of beach conditions during a time of closure to vehicles. Park operations include vehicle use as baseline conditions. See Master Response 6:

CEQA Baseline and Scope. No specific comment is presented on the content of the HCP or analysis in the EIR. No further response is required.

**Comment T1-7**

We respectfully request that the agency amend the EIR to grapple with the irreplaceable resources in this area, including by:

- Implementing readily feasible mitigation measures to preserve species and artifacts, such as by expanding exclosures and limiting OHV operations, rather than dismissing those options as unnecessary based on a flawed assessment of the environmental impacts of this decision and its significance;
- Addressing reasonably foreseeable impacts associated with OHV use, which the HCP would continue to permit, and thus would enable to cause environmentally significant effects;
- Reckoning with potential significant environmental impacts for those activities that fall outside of its own jurisdiction (as in, any activities it deems attributable to the County of San Luis Obispo), as required by California appellate caselaw;
- Engaging in a more fulsome consultation with the tribes that have cultural resources at stake.

Only by taking these measures can this unique site of important cultural significance be adequately protected.

Response to Comment T1-7

CDPR implements standard practices (EIR Volume 1 section 7.1.11) and SPRs (EIR Volume 3 Appendix B) to avoid and protect tribal cultural resources from project activities. Tribal consultation is a CDPR standard practice (EIR Volume 1 section 7.1.11) and occurred as part of this proposed project (EIR Volume 1 section 7.2.2.4). The EIR concludes that with implementation of these measures, the proposed new project activities would not have a significant impact on cultural or tribal cultural resources.

The effects of ongoing OHV use are part of baseline conditions at the park and is not subject to environmental review in this EIR. See Master Response 6: CEQA Baseline and Scope. Also, it should be noted that the portion of the HCP area open to OHV recreation has been reduced over the years as detailed in the discussion of Alternative 2 (EIR Volume 1 section 9.2.3.2, Recreation and Public Access) and now occurs on less than 25 percent of the HCP area (1,138 of 5,005 acres).

The comment does not present any new substantial evidence for CDPR consideration that changes the analysis presented in the EIR. It does not include substantial evidence for statements, such as providing citations to relevant appellate case law. No further response is required.

CDPR actively engages with local Native American tribes on conservation of cultural resources and protection of tribal cultural resources. This is achieved through tribal consultation and regular engagement with tribal representatives on areas of concern. CDPR welcomes ongoing communication with the Northern Chumash Tribal Council on concerns with management and protection of resources in the covered lands.

## RESPONSES TO AGENCY COMMENTS

Comment letters from public agencies and responses to those comment letters are included in this section.

### 3.1.2 Comment Letter A1. California Coastal Commission (2025)

**Comment A1-1**

We have previously provided extensive comments on the last draft of the HCP from 2020, where we voiced our appreciation for State Parks' efforts to obtain proper FESA coverage, but also identified several concerns, including that the proposed HCP allowed for significant take of sensitive coastal species and harm to their habitats. We also noted that the proposed HCP provisions do not conform with the California Coastal Act, the San Luis Obispo County and City of Grover Beach Local Coastal Programs, and Coastal Commission coastal development permit (CDP) 4-82-300 as amended, all of which govern State Parks activities at Oceano Dunes under state law. While we acknowledge and appreciate that the currently proposed HCP incorporates additional data to inform take estimates and management objectives for species, the HCP overall remains essentially unchanged from 2020. Thus, we continue to have the concerns raised in our previous letter.

Response to Comment A1-1:

Comments submitted on the 2020 Draft HCP and 2020 Draft EIR are addressed below starting in response to comment A1-3.

**Comment A1-2**

Under the terms of State Parks' CDP for Oceano Dunes, the Commission must undertake regular reviews of the efficacy of the CDP's protection of environmentally sensitive habitat areas. As a result, the Commission will need to take action on the CDP in the near future to fulfill that obligation. The scope and substance of that future action is unclear at this time, but it is likely that it will differ from the scope of activities evaluated under the current draft HCP. This could result, if the HCP/ITP is finalized before the Commission acts, in a misalignment between the activities authorized under the HCP/ITP and the activities authorized under the CDP. We understand that the HCP/ITP process has been ongoing for some time, and that State Parks is interested in moving forward with finalization in the near future. However, we felt it was important to raise this potential issue now so that all parties are aware of it.

Response to Comment A1-2:

CDPR acknowledges the authority of the Coastal Commission as the regulatory agency regarding Coastal Act compliance. As stated in EIR Volume 1 section 4.3.4, CDPR would confer with the Coastal Commission regarding potential future activities identified in the HCP that could be subject to a CDP.

[NOTE: the following comments A1-3 through A1-26 are comments from the Coastal Commission's 2020 comment letter that were incorporated into the Coastal Commission's 2025 comment letter by reference].

**Comment A1-3**

One of our significant concerns with the DEIR is that it concludes that none of the activities proposed in the DHCP would require an amendment to existing CDPs, including CDP 4-82-300's OHV and camping use parameters (DEIR Section 4.1.3.3). However, except for the no

project alternative, all of the alternatives (including the preferred alternative) in the DEIR and DHCP propose to make material changes to OHV/camping use protocols, including reducing the southern exclosure acreage and boundary by opening up as much as approximately 109 acres of dune ESHA to year-round OHV activity [CA-50], opening up a new 40-acre ESHA area near Oso Flaco Lake to OHV activity [CA-42], and mechanical beach grooming [CA-21]. Because these proposed activities constitute development as defined in the Coastal Act, all of them will require either a new CDP or an amendment to an existing CDP and must be found consistent with the Coastal Act and/or the LCP, including the policies prohibiting non-resource dependent development in ESHA. We recommend that Section 4.1.3.3 and the "Development" discussion on pages 4-13 to 4-14 be modified to reflect that these activities will require authorization by the Coastal Commission under the Coastal Act and that CDP authorization be added to Section 2.5 as a required permit.

Response to Comment A1-3

The statement in EIR Volume 1 section 4.1.3.3 that none of the HCP new covered activities require a CDP amendment was removed in the Recirculated Draft EIR. See EIR Volume 1 section 4.3.4.

As noted in EIR Volume 1 section 2.5.3, subsequent approvals could be required for proposed new activities or potential future activities covered by the HCP. CDPR will consult with responsible agencies, including the Coastal Commission, as appropriate for permitting. EIR Volume 1 section 2.5.3 has been revised to reflect the potential for CDP permitting.

Proposed changes to park operations being considered for CDPR approval are described in EIR Volume 1 section 2.4.2.2.

See Master Response 4: Consistency with Coastal Act for response to comments regarding whether proposed activities constitute development as defined in the Coastal Act.

See Master Response 6: CEQA Baseline and Scope and Master Response 13: Limited Trail Riding (CA-42).

**Comment A1-4**

We also are concerned about the conclusions on DEIR page 4-14 and Table 4-3 that these new covered activities would not conflict with the Coastal Act. We believe that the Coastal Commission would find that at least several of them do conflict with applicable LCPs and the Coastal Act. For example, allowing significant new areas of OHV use in dune ESHA [CA-42 and CA-50] is not consistent with Section 30240 of the Coastal Act or the equivalent sections of the County's LCP. However, the "Land Resource" section of the DEIR does not analyze whether opening up new dune ESHA areas to OHV use would be consistent with LCP and Coastal Act ESHA protection requirements. We believe that this omission is significant and recommend addition of this analysis and recognition that the proposed development raises Coastal Act and LCP conflicts because it is not resource dependent and will adversely impact ESHA. In addition, we recommend that the DEIR sections on public access and recreation be revised to recognize that these Coastal Act policies must be implemented consistent with the requirement to protect natural resource areas (see Coastal Act Sections 30210 and 30214). Beach grooming [CA-21] and snowy plover chick and egg capture [CA-12b] may also raise Coastal Act consistency issues and will require additional analysis by the Coastal Commission. For example, mechanical beach grooming is likely to impart further harm to the beach infaunal community that support the beach foodweb, including western snowy plover and California least tern.

Response to Comment A1-4

Proposed changes to park operations being considered for CDPR approval are described in EIR Volume 1 section 2.4.2.2. EIR Volume 1 section 4.3.4 evaluates these proposed new activities for consistency with Coastal Act planning and management policies. This discussion replaces Table 4-3 in the 2020 Draft EIR. See also response to comment A1-3.

See Master Response 13: Limited Trail Riding (CA-42).

See Master Response 4: Consistency with Coastal Act for discussion of project activities' consistency with the Coastal Act.

See Master Response 12: Mechanical Trash Removal (CA-21) for more information regarding impacts of CA-21 on the beach infaunal community supporting the beach food web.

**Comment A1-5**

DEIR Section 6.3.3 appears to underestimate the potential impact of the proposed activities on sensitive habitats. For example, the analysis of beach grooming [CA-21] acknowledges that such activities will be taking place in ESHA and that they may remove "favorable constituents within [snowy plover] and La Graciosa thistle critical habitat as well as ESHA by altering dune composition and topography. Specifically, mechanical trash removal could reduce organic surface materials (e.g., driftwood) and microtopography" (DEIR p. 6-109). The DEIR asserts that this ESHA has reduced value because it has been heavily used for recreational purposes and therefore beach grooming has a less than significant impact. The Coastal Act, however, does not provide lesser protection for potentially degraded ESHA and we recommend that this analysis be modified so that it does not purport to provide lesser protection for areas of ESHA which have experienced recreational use.

Response to Comment A1-5

Consistent with CEQA Guidelines section 15382, the EIR impact analysis focuses on identifying substantial or potentially substantial adverse changes in the physical conditions of the area affected by the project. The information presented in this comment does not provide any substantial evidence for CDPR consideration of how the EIR analysis of impacts to ESHA or other sensitive resources is inadequate. See Master Response 12: Mechanical Trash Removal (CA-21).

**Comment A1-6**

In addition, the discussion of the reduction of the seasonal exclosure [CA-50] concludes that because OHV use is currently allowed in these areas for part of the year, there will be a less than significant biological impact if such use is extended to also be allowed during the western snowy plover (WSP) and California Least Tern (CLT) breeding season. As discussed in more detail below, we do not think that the evidence supports such a conclusion. WSP and CLT, and their chicks, are more vulnerable during the breeding season and require additional protections during those times, including protection from motorized vehicles. We recommend that this section be modified to analyze the different impacts to protected species that will occur if there were to be OHV use in critical habitat areas, including both during the breeding season and outside of it.

Response to Comment A1-6

The EIR does not conclude that CA-50 would have less-than-significant impacts on SNPL and CLTE because OHV use is currently allowed in the nesting exclosures for part of the year; the

conclusion is based on a thorough consideration of all potential impacts on nesting SNPL and CLTE, ongoing and proposed implementation of the SNPL and CLTE management program, existing and proposed SNPL and CLTE AMMs, and over 20 years of data on SNPL and CLTE populations in the HCP area. EIR Volume 1 sections 6.3.2.1 and 6.3.2.2 address the effects of CA-50 specific to the CLTE and SNPL breeding season including designated critical habitat and provides the evidence supporting a conclusion that the impact of CA-50 on SNPL and CLTE would be less than significant. The HCP includes implementation of 46 AMMs addressing protection of SNPL and 37 AMMs addressing protection of CLTE from impacts related to motorized recreation (EIR Volume 3 Appendix B). Impacts addressed include direct harm from vehicle strike, breeding disturbance, separation of chicks from adults, nest abandonment, exposure to predation and inclement weather, and reduced quality of habitat. AMMs protecting adults and chicks during the breeding season include bumpout fencing and single-nest exclosures for nests occurring outside of the protected nesting area (seasonal exclosure), buffer zones, monitoring, etc. EIR Volume 1 section 6.3.2.1 addresses the impact of CA-50 on designated SNPL critical habitat. See Master Response 7: Reduction of Boneyard and 6 Exclosures (CA-50) for more information.

**Comment A1-7**

We are also concerned about the statements in the DEIR that State Parks considers OHV use to be a "coastal-dependent development or use," as defined in the Coastal Act (DEIR p. 8-6). The Coastal Commission has found that that is not the case in past actions related to Oceano Dunes. Specifically, the Coastal Act defines and limits such uses to "development which requires a site on, or adjacent to, the sea to be able to function at all" (Coastal Act section 30101). One may camp and ride OHVs (and horses) in non-coastal areas. Therefore, they are not activities that must take place along the coast to be able to function at all. The DEIR concludes that activities such as camping and vehicular recreation are "coastal-dependent" because they are taking place in beach and coastal dune areas. Simply because some activities are enjoyed at the beach or in coastal areas does not make them "coastal-dependent." This analysis would expand coastal-dependent development or uses to any development that one might prefer to do along the coast, such as a build a home with an ocean view, into a coastal-dependent development. Such an interpretation is not consistent with the Coastal Act, and we request that the first paragraph, the first three bullets of section 8.2.3, and any other similar statements/descriptions be removed from the final EIR.

Response to Comment A1-7

The San Luis Obispo County certified LCP establishes recreation activities which may occur within the coastal. zone consistent with the Coastal Act. EIR Volume 1 section 8.2.3 acknowledges that the CCC is the sole agency with primary jurisdiction over the Coastal Act and as such may or may not find these activities to be coastal-dependent uses.

Whether OHV recreation in the HCP area is classified by the CCC as a coastal-dependent use is not a CEQA issue. The EIR Chapter 8 Recreation discussion focuses on whether project activities would substantially limit, reduce, or interfere with established coastal recreational opportunities or public access. Of the 280 state park units, 9 of which are classified as SVRAs, Oceano Dunes SVRA is the only California state park unit allowing motorized recreation on a beach (EIR Volume 1 section 8.2.1). Motorized recreation has occurred historically on the beach since the turn of the 20th century, prior to state purchase of the property and establishment of the SVRA in 1975 (EIR Volume 1 section 8.2.3.3). See Master Response 3: HCP with CDPR

Mission and Mandates for more information. Given the long-established recreation and public access within the HCP area, and the special nature of the coastal setting, the EIR assesses potential project impacts to the recreation opportunities and access apart from the specific LCP definition.

**Comment A1-8**

With respect to alternatives, the DEIR considered a total of 11. As an initial matter, seven of these alternatives were dismissed without further evaluation, and four of them were further considered. Among the seven immediately rejected alternatives was a "No Take Park Operation" that would prohibit vehicle use in the Park, a "Changes in Oceano Dunes SVRA Access" alternative that would include either a bridge over Arroyo Grande Creek or a different access route to avoid its vehicular crossing, a "Restricted Riding Times" alternative that prohibited night riding and closed the Park to vehicle use seasonally, and an "Increased Vehicle Use Limits" alternative. These alternatives are among those that the Coastal Commission, in its July 2019 action, asked State Parks to address in its PWP, and we recommend that they also be fully evaluated here.

Response to Comment A1-8

The EIR considered a wide range of alternatives, including the alternatives noted in the comment. An EIR need not consider every conceivable alternative. Other than implying disagreement with one part of the rationale for dismissing development of a bridge crossing Arroyo Grande Creek, the comment does not provide any substantial evidence for CDPR consideration specifying how any alternatives were dismissed inconsistent with section 15126.6. Further evaluation of these alternatives is not warranted. See Master Response 14: Discussion of Alternatives.

See Master Response 4: Consistency with the Coastal Act regarding the July 2019 Coastal Commission CDP review.

The purpose of the HCP is not the same as the purpose of the PWP. See Master Response 1: HCP Purpose and ITP Issuance Requirements and Master Response 5: Public Works Plan.

**Comment A1-9**

We are concerned that the alternatives analysis does not adequately analyze the potential biological impacts of each alternative nor the biological benefits of the alternatives that were rejected. For example, with respect to OHV use, there are a number of studies that have evaluated the adverse impacts of OHV use on beaches (including both intertidal and upper beach zones) and dunes. One such study found that OHV recreational activity causes the highest levels of environmental harm to beaches and dunes of any recreational activity. Another identified such harms to include 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. As such, it is unclear why the reduced vehicle use limits alternative was rejected, considering that the DEIR does state that take would likely be reduced under this alternative. It then states, however, that because it is difficult to assess the reduction in take, it may not result in reduced take. This conclusion does not appear to be supported by the rest of the analysis related to this alternative.

Response to Comment A1-9

See Master Response 14: Discussion of Alternatives for discussion regarding purpose of alternatives.

OHV use in the HCP area is an authorized recreational use and is permitted in OHV use areas as identified in the San Luis Obispo County LCP. The biological effects of existing OHV use are described in EIR Volume 3 Appendix D. The project activity being evaluated under CEQA is specific new park management actions (EIR Volume 1 section 2.4.2.2) and not the continuation of an existing lawful use. It is the significant adverse impacts caused by these new actions and the need to reduce these effects that determine the appropriateness of alternatives.

A Reduced Vehicle Use Limits alternative was considered in EIR Volume 1 section 9.2.4. The EIR states it is possible the alternative "could lower the risk of take," not that "take would likely be reduced." The difficulty in assessing the reduction is not the reason for concluding reduction may not occur. See Master Response 14: Discussion of Alternatives for discussion of Alternative 4, Reduced Vehicle Use Limits.

**Comment A1-10**

With respect to vehicular crossings at Arroyo Grande Creek, vehicles currently drive through the creek at a variety of depths and also breach the banks of the creek in such a way that the creek banks can erode considerably and widen the creek channel. […] Therefore, we recommend that the EIR analyze in more depth the potential adverse impacts of vehicles driving through Arroyo Grande Creek during the time of year when rain water has elevated the banks of Arroyo Grande Creek and breaching is likely, and following any breach event.

Response to Comment A1-10

This is a comment on existing park management operations and not a comment on proposed new project activities. It is outside the scope of an EIR to analyze impacts to existing park operations, which are not subject to CEQA review.

Proposed new project activities are identified in EIR Volume 1 section 2.4.2.2. Vehicle creek crossing (CA-40) is not a new activity proposed for approval. Impacts to Arroyo Grande Creek resources due to vehicle crossing are effects of the existing park operation and are baseline conditions. Biological effects of existing park operations are described in EIR Volume 3 Appendix D.

See Master Response 6: CEQA Baseline and Scope.

**Comment A1-11**

We also recommend that the EIR include a more complete analysis of the alternative to make the seasonal exclosure permanent and/or to expand it. There are a large number of plovers found in areas outside of the existing exclosure, including 15 that were found dead in 2018 (8 of which were found crushed next to tire tracks). Plovers naturally seek to avoid encounters with humans, so the presence of a refuge away from human pressures, particularly OHV riding, may reduce plover loss during the overwintering season, from October through February of each year, and at a minimum would allow recovery of beach-dwelling invertebrate species on which WSP feed. In addition, there is evidence that the southern exclosure is not large enough for the current plover population, given the very large number of nests. In 2018, 66 were found nesting outside, but adjacent to, the southern exclosure, and aggressive territorial behavior in areas of overcrowding has been observed in recent years. Plovers also frequently nest between the westward edge of the

exclosure and the ocean and in areas south of the exclosure, known as Oso Flaco south. We recommend that the EIR include these factors when assessing this alternative.

Response to Comment A1-11

A permanent year-round exclosure alternative is evaluated in EIR Volume 1 section 9.2.3 (Alternative 3). The comment requests more in-depth analysis but does not identify the type of information requested or explain why the alternative presented is deficient. See Master Response 14: Discussion of Alternatives for discussion regarding the Alternative 3: Permanent Year-Round Exclosures.

The comment is incorrect about the number of SNPL found nesting outside the exclosure in 2018. As shown in HCP Table 3-7 and Map 11c, in 2018 no SNPL nested outside the seasonal exclosure (including both the Southern and Oso Flaco exclosures). The commenter may be confused about the exclosure area and fencing placement. The westernmost (shoreline) fencing along the 6 and 7 exclosures is placed far enough east to provide a wider functional shoreline habitat. Many SNPL do nest in the area between the shoreline and the fence, but this area is all within the seasonal exclosure and is protected from OHVs and other non-CDPR access.

Birds found outside of an exclosure are not necessarily evidence that an exclosure is too small. Whether foraging, nesting, or resting, birds are not confined to an exclosure and move about. Birds do attempt to nest outside of exclosure areas. Aggression has been observed and could be exacerbated by a reduction in the seasonal exclosure as discussed in EIR Volume 1 section 6.3.2. See also Master Response 7: Reduction of Boneyard and 6 Exclosures (CA-50). CDPR has an adaptive management program to evaluate the need for additional protection measures to address protection of the species from overcrowding (see HCP section 5.5). See Master Response 14: Discussion of Alternatives for discussion of an expanded exclosure alternative.

The purpose of an HCP is not species recovery or delisting, but to ensure that the taking meets permit issuance criteria and does not appreciably reduce the likelihood of survival and recovery of the species. See Master Response 1: HCP Purposed and ITP Issuance Requirements for more information.

**Comment A1-12**

For the alternative that would eliminate riding at night, we recommend that the EIR analyze the likely effects of artificial night lighting on migrating bird species and mammals, including avoidance behaviors, disorientation, disruption of foraging and migration patterns, increased predation risk, and disruption of circadian rhythms. In addition, noise or sound plays an important role in an ecosystem. Activities such as finding desirable habitat and mates, avoiding predators, protecting young, and establishing territories are all dependent on the acoustic environment. A growing number of studies indicate that animals, like humans, are stressed by noisy environments. The listed species at Oceano Dunes are all more vulnerable to the impacts identified above at night. This information should be included when assessing the elimination of the night riding alternative.

Response to Comment A1-12

The effects of night lighting on species is an existing impact of park operations and is not subject to CEQA review (See Master Response 6: CEQA Baseline and Scope). The effects of night riding are described in EIR Volume 3 Appendix D. The effects of noise on species is an existing impact of park operations and is described in EIR Volume 3 Appendix D.

EIR Volume 1 section 9.1.4.1 considered elimination of night riding as a project alternative to reduce potential take. As noted in section 9.1.4.1, however, the proposed new covered activities do not create a potentially significant impact due to changes in nighttime riding patterns. Additionally, eliminating or reducing night riding would not reduce other significant impacts identified in the EIR. See Master Response 14: Discussion of Alternatives.

**Comment A1-13**

Our primary concern with the DHCP is that although the HCP is intended to "provide habitat-level protection and management and minimize human-related impacts to key threatened or endangered wildlife," the DHCP instead outlines management protocols that would actually decrease existing protection for such species, even though existing management has already resulted in significant take of species such as the western snowy plover (DHCP p. 1-1). Thus, by allowing even more take than is currently experienced at the Park the DHCP does not appear to meet the requirement to minimize the impacts of the covered activities.

Response to Comment A1-13

The purpose of the HCP is to present a sustainable conservation program to USFWS for issuance of an ITP in compliance with FESA to authorize take of listed species that is incidental to otherwise lawful activities. See Master Response 1: HCP Purpose and ITP Issuance Requirements for more information.

HCP Chapter 4 and EIR Appendix D address the effects of existing management operations on take of federally-listed species such as SNPL. CDPR has been implementing conservation activities for 25 years resulting in increased breeding SNPL adults and CLTE breeding pairs despite past take from ongoing park operation activities. There is no evidence that incidental take occurring over the past two decades of intensive species management has significantly affected the breeding population of either species in the HCP area.

New management activities are proposed in response to multiple mandates regarding resource conservation and recreation. See Master Response 3: HCP with CDPR Mission and Mandates. The EIR evaluates the effect of take proposed by new management activities and concludes that the AMMs and mitigation presented in HCP Section 5 fully address take impacts. Proposed permitted take levels would not have a significant impact on the SNPL or CLTE populations in the HCP area. See Master Response 2: HCP Proposed Levels of Permitted Take. The USFWS will evaluate the HCP to determine whether it meets the requirements for ITP issuance.

**Comment A1-14**

*DHCP Alternatives Analysis*

As with the DEIR, we have similar concerns regarding the adequacy of the DHCP's alternatives analysis. The DHCP identifies one of the two commonly considered alternatives as a "no project alternative in which no permit would be issued and take would be avoided" (DHCP at p. 8-1). However, while the DHCP analyzes a "no project" alternative, it is not one in which take is avoided. Instead, the DHCP recognizes that existing operations currently result in take and rejects this alternative because USFWS would still be required to enforce the Endangered Species Act and such enforcement might result in operation shutdowns in order to prevent take. In essence, this alternative is rejected not because it is infeasible or because it would result in take of listed species, but instead because it would result in greater protection of listed species. We therefore believe that this alternative should be analyzed further.

The second alternative analyzed in the DHCP would retain the current size of the southern exclosure. It was rejected, however, even though it would result in less take of listed species than the chosen alternative, because the DHCP concludes that the reduction or elimination of the southern exclosure would better meet Oceano Dunes' "recreational needs", and that take under the chosen alternative would be minimized. But this analysis does not find that this alternative is infeasible and thus does not meet the requirements that HCPs minimize and mitigate take to the maximum extent feasible. We believe that this alternative should be analyzed further as well.

Response to Comment A1-14

Although CDPR would continue to enforce regulations and implement AMMs in the absence of an ITP, the No Action Alternative was rejected in the HCP because it does not provide CDPR with the legal protection afforded by an ITP allowing continued operation of recreation activities in the HCP area (see HCP section 8.2). The Northern Boundary Alternative was not selected because CDPR determined that the conservation program proposed under the HCP provides adequate measures to address the risks of reducing and eventually eliminating the 6 Exclosure (HCP section 8.3). FESA requires that ITP applicants specify in the HCP what alternative actions to the taking of federally listed species were considered and the reasons why those alternatives were not selected. FESA does not require selection of one alternative over another. Rather, the USFWS evaluates whether the HCP meets issuance criteria. See Master Response 14: Discussion of Alternatives for more information.

The purpose of an HCP is not species recovery or delisting, but to ensure that the taking meets permit issuance criteria and does not appreciably reduce the likelihood of survival and recovery of the species. See Master Response 1: HCP Purpose and ITP Issuance Requirements.

**Comment A1-15**

We also recommend that the HCP also consider alternatives that reduce the current level of OHV use in the Park, including an evaluation of the 15 measures that State Parks is required by the Coastal Commission to address in its proposed PWP by this summer. Further, another alternative we recommend be evaluated is one in which there is no OHV use in the Park. This is an alternative that the Coastal Commission identifies in its July 2019 action (again, see attached), and it is one that would clearly reduce take of the listed species covered by the HCP. While we recognize that this alternative may ultimately not meet State Parks' OHV objectives, we still believe that it is an important alternative to be analyzed through this HCP.

In sum, without an analysis of a broader range of management and mitigation alternatives, we do not think that the DHCP adequately demonstrates that the chosen alternative mitigates and minimizes the impacts of Park operations on the 10 listed species "to the maximum extent practicable," as is required under ESA.

Response to Comment A1-15

Since the court decisions on the proposed March 2021 CDP amendment, the Oceano Dunes District has reverted to operating under Amendment A5 of the CDP, which was approved in 2001. The 15 CDP conditions recommended in 2019 are no longer relevant. See Master Response 3: Consistency with the Coastal Act and Master Response 5: Public Works Plan for more information.

A No OHV Alternative eliminating OHV use in the park was not considered in the EIR or HCP as a project alternative since the park is an SVRA established by the state legislature for the

explicit purpose of providing an area for motorized recreation. See Master Response 14: Discussion of Alternatives for more information.

The purpose of the HCP is to present a sustainable conservation program to USFWS for issuance of an ITP in compliance with FESA to authorize take of listed species that is incidental to otherwise lawful activities. An HCP is not a species recovery plan, as defined in Section 4 of FESA, and is not required under FESA to eliminate all activities that could result in take or to include activities that directly contribute to delisting covered species populations. The HCP must meet the biological goals and ITP issuance criteria. See Master Response 1: HCP Purpose and ITP Issuance Requirements for more information.

**Comment A1-16**

*DHCP Biological Analysis*

In addition to our concerns with the breadth of alternatives analyzed in the DHCP, we have concerns regarding the DHCP's assessment of biological impacts. We recommend that the HCP include consideration of the following:

1. With regard to WSP and CLT, the DHCP proposes reducing the existing 300-acre seasonal southern exclosure to 191 acres, and thus seasonally increasing OHV use by 109 acres. In addition, it proposes opening to OHV use another currently off-limits 40-acre dune ESHA area supporting native dune vegetation very near to the seasonal exclosure and Oso Flaco Lake. Opening up this undisturbed dune area will encourage new traffic adjacent to the existing seasonal exclosure and increase the risk of take of WSP chicks and nesting adults. It is worth noting that all portions of the seasonal exclosure targeted for reduction, and all of the area near the shoreline in Oceano Dunes as a whole, are USFWS-designated "critical habitat" for WSP. Further, the areas of the seasonal exclosure slated to be opened up to OHV use are among the most widely-used for nesting (i.e., Subarea 6) or serve as important buffer areas for highly used nesting areas (i.e., the east boneyard area buffers and the west boneyard exclosure). The WSP population is already limited in the Park due to a dearth of areas free from OHV use. We recommend that the DHCP include additional analysis of these proposed reductions in protected areas, including consideration of the following:
    a. Between 2005 and 2018, Subarea 6, which is proposed to be opened for OHV use under the DHCP, was the location of 25–45% of all WSPs and 35–80% of all CLT nests during the breeding period.
    b. The northern portion of Subarea 6 (slated to be removed from protection first), has been the location of the CLT communal night roost over the last several years. According to the USFWS, "secure roosting and foraging areas are essential to the recovery of the species," and may serve as a means for lowering predation at CLT nesting sites.
    c. Although the DHCP does state that Subarea 6 would be removed in stages, and only if species' objectives are met, those objectives are set far below current and historical occupancy and fledgling rates, practically ensuring they will be easily met. For example, the DHCP sets 155 WSP breeding pairs as its annual goal, which is substantially lower than the five-year average of 202 breeding pairs. Similarly, the DHCP establishes a goal of 1.0 fledgling per adult male plover per year. However, the five-year average fledgling rate is 1.68. For CLT, the DHCP goals of 41 breeding pairs per year and a fledge rate of 1.0 juveniles per nesting pair is also lower than recent documentation. These standards

have the effect of allowing a decrease in breeding and fledgling success. The DHCP does not provide evidence to support how these lower rates were derived or how they minimize and mitigate the effects of the covered activities.

d. Further, the removal of Subarea 6 will cause nests established in the remaining exclosure areas to be packed more tightly, and there is already evidence that the tight spacing of WSP and CLT nests within the existing 300-acre seasonal exclosure acreage has led to adult territorial aggression when chicks from one brood wander into the territory of another (hence the Coastal Commission's July 2019 recommendation to increase the size of the exclosure area).

e. The DHCP also proposes that bump outs or individual nest exclosures would be used if plovers nest in Subarea 6 following the removal of fencing. In our view, this is not an equivalent means of protection. Although individual nest exclosures have been known to provide nest protection, they can also lead to greater predation of adult WSPs when avian predators perch on top of the exclosures and consume adults as soon as they leave the nest, with mortality of nest eggs or chicks soon to follow.

Response to Comment A1-16

This is a comment on the content of the HCP submitted in a federal ITP application. This is not a comment on CDPR's proposed new project activities or the EIR analysis of the proposed activities.

The EIR addresses the impacts of reducing the seasonal exclosure in its assessment of CA-50 reducing the Boneyard and 6 Exclosures.

See Master Response 1: HCP Purpose and Requirements, Master Response 6: CEQA Baseline and Scope, Master Response 7: Reduction of the Boneyard and 6 Exclosures, and Master Response 14: Discussion of Alternatives.

**Comment A1-17**

2. The proposed closure of the east boneyard exclosure and opening up of an additional 40 acres to OHV riding just north of Oso Flaco Lake are also likely to increase take of WSP and CLT. Although the DHCP notes that fewer birds have nested in the east boneyard location in recent years, this exclosure area still provides an important buffer to the west boneyard area, where more WSPs nest. This buffer helps maintain a substantial distance between nesting birds and OHV riders and pedestrians. Moreover, the east boneyard exclosure has acted as a barrier for through traffic between northern and southern areas of the park during the nesting season, and from northern access to the Oso Flaco Lake area. If it is removed, it is highly likely that OHV traffic will increase in this location, thereby increasing the risk of vehicle collisions with WSP.

Response to Comment A1-17

See Master Response 7: Reduction of the Boneyard and 6 Exclosures (CA-50) for information on the rationale, criteria, and impacts on SNPL and CLTE from reduction of exclosures, including East Boneyard. Riding in 40 Acres identified in the 2020 Draft HCP would be limited to trail riding, and the covered activity was renamed to Limited Trail Riding (CA-42) in the 2025 Draft HCP. See Master Response 13: Limited Trail Riding (CA-42) for more information.

**Comment A1-18**

3. There has been an alarmingly high take of WSP at Oceano Dunes in recent years. In 2018, there was one documented CLT and 36 WSP deaths from all causes to chicks, juveniles and adults. Many additional birds were injured. In 2019, the documented death rates were 3 for CLT and 26 for WSP. It was also noted that several of these individuals were found amidst tire tracks. Given the difficulty of locating small birds across this vast area, these numbers undoubtedly underestimate the actual take of these listed species. Despite these issues, the DHCP would allow increased take by reducing existing protections.

Response to Comment A1-18

The information in this comment was considered in the updated 2025 HCP along with new information developed since the 2020 version of the HCP. Not all of the noted mortality is take (i.e., caused directly or indirectly by human activity). This number includes mortality from natural causes including sickness and predation and take from species recovery activities. Of the 36 SNPL mortalities reported in 2018, only 8 adult deaths occurred within the open riding area and may be attributed to motorized recreation or park operations. The remaining occurred in protected exclosures or in South Oso Flaco outside of the riding area boundaries. Of the 26 SNPL mortalities reported in 2019, only 5 adult deaths occurred within the open riding area and may be attributed to visitor recreation or park operations. The remaining occurred in protected exclosures or in North Oso Flaco outside of the riding area boundaries.

Take levels from 2020-2024 were added to the 2025 Draft HCP and ranged from 1-5 SNPL mortalities per year (see HCP Tables 4-1 and 4-2) and 0-1 CLTE mortalities per year (see HCP Table 4-4). As indicated by the tables, SNPL injury and mortality attributed to recreation have fluctuated throughout the years; however, higher take numbers, when they have occurred, have not been due to additional visitor use, new recreation activities, or reduced CDPR monitoring.

CDPR investigates all incidents of SNPL and CLTE mortality or injury to determine possible causes and interventions, the level of take should not be characterized as alarming. The mortality level is a low percentage of the adult breeding population and does not jeopardize breeding production levels or a stable population at Oceano Dunes. The long-term average rate of well over 1.2 SNPL chicks fledged per male indicates the conservation program is supporting population growth.

The HCP is a mechanism to permit incidental take in accordance with FESA. As a result, the HCP is attempting to permit the take that is presently occurring and will continue to occur in the HCP area, including take associated with new activities. See Master Response 1: HCP Purpose and ITP Issuance Requirements. Also see Master Response 2: HCP Proposed Levels of Permitted Take.

**Comment A1-19**

4. The success criteria for WSP and CLT, as noted in 1(c) above, raise concerns more generally about the adequacy of the analysis of appropriate minimization and mitigation measures in the DHCP. We recommend that the DHCP focus more on maximizing habitat protections and seeking ways to increase the occupancy of breeding pairs and fledgling rates. We are concerned that the DHCP lowers the bar for success by setting more modest goals that could then be used as justification to open up additional acreage to OHV activity, thereby neither minimizing impacts to protected species nor maximizing mitigation.

Response to Comment A1-19

This is a comment on the existing park management operations and content of the HCP submitted in a federal ITP application. This is not a comment on CDPR proposed new project activities or the EIR analysis of the proposed activities. It is outside the scope of an EIR to impacts of park operations that are not subject to CEQA review. See Master Response 6: CEQA Baseline and Scope.

See Master Response 1: HCP Purpose and Requirements and Master Response 6: CEQA Baseline and Scope.

**Comment A1-20**

5. Also notable within the DHCP are the omission of several measures that would appear to be relatively easy to implement. For example, the discussion of plover protections focuses primarily on nesting WSP and CLT. Many WSP, however, overwinter at Oceano Dunes, and this population is also subject to high predation. In addition, a visit to Oceano Dunes reveals many locations where speed limits of 15 mph are posted. Yet, speeds in excess of 15 mph appear to be commonplace. A vigorous speed limit enforcement program with park ejections and penalties could go a long way to reducing this threat to all species that share the park with human recreationists, and would likely help to better protect public safety as well.

Response to Comment A1-20

This is a comment on the existing park management operations and content of the HCP submitted in a federal ITP application. This is not a comment on CDPR proposed new project activities or the EIR analysis of the proposed activities. It is outside the scope of an EIR to impacts of park operations that are not subject to CEQA review. See Master Response 6: CEQA Baseline and Scope. Speed limit enforcement, including increased enforcement, is included in the HCP, e.g., SNPL AMMs 4, 20, and 24.

**Comment A1-21**

6. One other measure for which myriad solutions exist include the development of better practices for solid waste management. A recent visit to the park revealed open dumpsters at Post 2. This area is known to be a major attractant for predators, especially gulls (hundreds have been detected over a single hour when conditions are right) that are known to predate WSP and CLT. This measure is not discussed in the DHCP.

Response to Comment A1-21

Since 2021, CDPR has deployed covered dumpsters that open from the side, which has been found to attract fewer gulls than the previous design (see HCP section 2.2.3.3).

**Comment A1-22**

7. The prohibition on vehicular use at night, including night OHV riding, would also undoubtedly reduce mortality of WSP and CLT, as well as night-migrating California red-legged frogs (see also the discussion above).

Response to Comment A1-22

This is a comment on existing park management operations and not a comment on proposed new project activities. It is outside the scope of an EIR to analyze alternatives to existing park operations that are not subject to CEQA review.

Night riding was rejected from consideration from project alternatives in the EIR (EIR Volume 1 section 9.1.4.1). Vehicular use at night is being further evaluated through the Biodiversity Management Plan in consultation with CDFW. See Master Response 14: Discussion of Alternatives. See also response to Comment A1-9.

**Comment A1-23**

8. Further, although some educational materials are posted regarding the presence of threatened and endangered species in the park, a robust education program that sought to enlist the stewardship of park visitors and better inform them about activities likely to cause take would undoubtedly be beneficial.

Response to Comment A1-23

This is a comment on existing park management operations and not a comment on proposed new project activities. It is outside the scope of an EIR to analyze alternatives to existing park operations that are not subject to CEQA review.

AMMs require CDPR to continue to create educational content on the Oceano Dunes SVRA and Pismo State Beach website, interpretive programs, signage, and other media. The information allows visitors to find out what the parks are doing and what they can do to protect the covered species.

**Comment A1-24**

9. Beyond the changes that will affect WSP and CLT successful breeding and population recovery, there are no proposed changes to the crossing of Arroyo Grande Creek, despite the probability that this activity leads to take of tidewater goby every year, as described in more detail above. The DHCP describes the dynamic tendency for Arroyo Grande Creek to morph and change as it breaches the lagoon mouth and forms ponds that likely contain tidewater goby and other fish species. Regarding management of these dynamic ponds, the DHCP states: “it is not feasible for CDPR staff to move fencing and closure signage each time the area changes and visitors may not know they are prohibited from driving through ponded areas.” To reduce the possibility of take during this dynamic period, which likely only occurs for a period of days or at most weeks, it appears that riders could easily be prohibited from entering this area for the entire period, only requiring signs to be erected a single time, and only effecting ridership for a short period of the year.

Response to Comment A1-24

This is a comment on existing park management operations and not a comment on proposed new project activities. It is outside the scope of an EIR to analyze alternatives to existing park operations that are not subject to CEQA review.

The EIR discusses a bridge over Arroyo Creek in Alternatives under alternate access (EIR Volume 1 section 9.1.3.1). CDPR prohibits creek crossing under high flow conditions, and signage is posted accordingly. The creek may be safely crossed during low flow conditions without risk to tidewater goby. CDPR does not enact temporal closure for the entire period the creek is running as the crossing is necessary to access the HCP area south of the creek for camping and other recreation activities. Impacts to Arroyo Grande creek resources due to vehicle crossing are effects of the existing park operation and are thus baseline conditions. See HCP section 4.8.1.5.1 regarding existing effects of vehicle creek crossing on tidewater goby, and HCP Table 5-7 regarding AMMs for tidewater goby.

This comment includes speculation on impacts to tidewater goby but does not present any new substantial evidence for CDPR consideration in the analysis of the covered activities and impacts of new projects under evaluation in the EIR.

See Master Response 14: Discussion of Alternatives.

**Comment A1-25**

10. Personnel and cost limitations are invoked in several passages within the DHCP for measures that would likely reduce harm to listed species but that are dismissed, yet in many cases relatively simple solutions could be productively employed. The DHCP also fails to establish that even if these measures increase costs, such cost increases are not feasible mitigation measures.

Response to Comment A1-25

This is a comment on the existing park management operations and content of the HCP submitted in a federal ITP application. This is not a comment on CDPR proposed new project activities or the EIR analysis of the proposed activities. It is outside the scope of an EIR to impacts of park operations that are not subject to CEQA review. See Master Response 6: CEQA Baseline and Scope.

The comment does not identify any new substantial evidence for CDPR consideration, nor does it provide substantial evidence for the "relatively simple solutions." No further response is required.

**Comment A1-26**

We also note, however, that rather than completing the HCP at this time, State Parks and USFWS could wait to further consider the HCP and its associated EIR until after the Coastal Commission takes action on State Parks' PWP. The content of the PWP would then be available to inform the range of alternatives and management measures that could need to be considered in the HCP and EIR. Although this would delay the HCP and EIR process, having that process commence after the Commission acts on the PWP would provide greater certainty to the agencies involved, and USFWS, State Parks, and the Coastal Commission would have the benefit of the information developed through the completion of the PWP (and/or LCP/CDP changes).

Response to Comment A1-26

The PWP process is currently on hold and is unrelated to FESA incidental take authorization. See Master Response 1: HCP Purpose and Requirements and Master Response 5: Public Works Plan for more information.

### 3.1.3 Comment Letter A2. California Department of Fish and Wildlife

**Comment A2-1**

Removal of Seasonal Fencing

Removal of Seasonal Fencing As discussed in Attachment 1, the removal of seasonal fencing east around the Boneyard Exclosure and the 6 Exclosure would reduce the amount of available protected habitat for western snowy plover (SNPL) and California least tern (CLTE) nesting. The reduction of available nesting habitat and increased disturbance from HCP activities occurring within and adjacent to these areas may also cause SNPL, CLTE and other migratory bird species

to discontinue their use of these areas and the HCP area in general. Additionally, the revised HCP avoidance and minimization measures including a slow reduction of the 6 Exclosure, a reinstatement of the 6 Exclosure if the updated SNPL breeding population metric is not met, and creating single nest exclosures for SNPL that nest outside of protected areas will not replace nor offset the removal of permanently protected nesting and foraging habitat nor meet the requirements to avoid impacts to a fully protected species. As such, CDFW continues to recommend that CDPR acquire take authorization through the completion and approval of the NCCP and that CDPR restrict all activities that could potentially result in take of any fully protected species, including removing the fencing around the Boneyard and 6 Exclosure, until a NCCP has been approved by CDFW and take authorization pursuant to Fish and Game Code section 2835 has been obtained from CDFW. CDFW also recommends that CDPR continue collaborating on the BMP (CDFW 2021) and implementing the measures outlined in the BMP (CDFW 2021) to avoid and minimize impacts to sensitive biological resources while the NCCP is being developed.

Response to Comment A2-1

There is no evidence to support that a reduction in protected habitat may cause SNPL, CLTE, or other migratory birds to discontinue use of these areas or the broader HCP area or make the area unsuitable for bird species nursery sites. Site-specific information shows that these birds will adjust their nesting patterns based on small changes to site conditions. See Master Response 7: Reduction of Boneyard and 6 Exclosures (CA-50) for more information. Attachment 1 expresses concern for impacts on migratory bird species use of a Pacific Flyway Migratory Route. The seasonal exclosure is not in place during the winter season; therefore, a reduction in the seasonal exclosure acreage would not impact wintering birds. The Pacific Flyway is primarily used during spring and fall migrations to and from breeding grounds when the seasonal exclosure is in place. Any effect of the seasonal exclosure on the Pacific Flyway is a baseline condition. The information presented in this comment does not provide any substantial evidence for CDPR consideration of how the EIR analysis of impacts to listed species or other sensitive resources is inadequate and does not change the conclusions in the EIR that the project impact to migratory birds is less than significant.

The HCP and EIR acknowledge and assess the impact of the loss of high-quality protected nesting habitat on SNPL and CLTE in HCP sections 4.3.1.5.11 and 4.4.1.5.11 and in EIR Volume 1 sections 6..3.2. 1 and 6..3.2.2. Issues addressed include the scale of the reduced of protected nesting habitat, impact to species nesting outside of protected habitat, nest overcrowding, adult aggression, and long-term reproductive success. Also see Master Response 1: HCP Purpose and ITP Issuance Requirements.

CDPR will work with CDFW to pursue an NCCP for any potential take of fully protected species. CDPR would seek to continue operations to avoid take of fully protected species during the development of an NCCP. See Master Response 10: California Fully Protected Species and NCCP. There are interim steps identified in the 2021 Biodiversity Management Plan and the annual nesting season management plan to reduce the likelihood of take to fully protected species.

**Comment A2-2**

Night Vehicle Use

The revised HCP allows for unrestricted access for both street legal and off highway vehicle use within the HCP area and acknowledges that night vehicle use can have impacts (e.g., vehicle strikes that cause injury or mortality) on SNPL and CLTE. As the Draft HCP presumed that night vehicle use impacts would be uncommon and insignificant, this was based on a past impact study with noted shortcomings. Thus, CDFW has recommended that a new peer reviewed, multi-year academic study be conducted and funded by CDPR. CDPR agreed to conduct and fund a new multi-year study (hereafter, Night Riding Study) as part of the BMP (CDFW 2021) and collaboration with CDFW on the Night Riding Study is ongoing. In the event that the Night Riding Study demonstrates that night OHV activities result in any of the following: 1) statistically significant reductions to avian spatial and/or temporal use patterns; 2) statistically significant reductions to nesting and/or nesting success; 3) statistically significant reductions in foraging times or areas; or 4) statistically significant reductions to overall individual numbers of special status avian species, CDFW recommends that highway vehicle access along the foredunes and surf zone south of Post 4.5 be restricted after sunset CDFW until a NCCP has been approved by CDFW and take authorization pursuant to Fish and Game Code section 2835 has been obtained from CDFW.

Response to Comment A2-2

Nighttime riding is an existing park operation and therefore is part of the baseline for CEQA purposes. CDPR proposed new activities do not create substantially changed nighttime riding patterns or introduce new impacts from nighttime riding. See Master Response 6: CEQA Baseline and Scope for more information.

Vehicular use at night is being further evaluated through the Biodiversity Management Plan in consultation with CDFW. Through an adaptive management framework, night riding restrictions can be implemented if studies of site-specific conditions warrant a change in night riding activity. See also Master Response 14: Discussion of Alternatives and response to Coastal Commission comment A1-12.

**Comment A2-3**

Capture and Captive Rearing of Western Snowy Plover Chicks and Eggs

The revised HCP proposes to allow the increased capture and captive rearing of up to 12 SNPL chicks and/or 12 SNPL eggs per year if the chicks and/or eggs cannot be reunited with the adult or are at risk of harm from HCP activities. As outlined in Attachment 1, the capture and captive rearing of SNPL chicks and eggs is considered take under Fish and Game code and would require appropriate permits from CDFW before commencement of these activities. Additionally, the revised HCP includes directing SNPL chicks from the open riding area back into exclosures. These measures would also be considered "pursuit" and therefore "take" under Fish and Game Code section 86.

Response to Comment A2-3

Capture and captive rearing of SNPL chicks and eggs, included in CA-12b, is described in HCP section 2.2.2.1.2. "If SNPL chick(s) are separated from the brood and remain in the riding area and are at risk of being struck by a vehicle despite CDPR's best efforts to direct them back to the closed area, CDPR may capture the abandoned chicks and attempt to reunite them with sibling

chick(s) and attending adult(s) within the protected area. If reuniting chicks is not feasible (e.g., close proximity of broods on the shoreline would cause too much disturbance, weather conditions are unfavorable, remaining brood cannot be located) or efforts to reunite the SNPL chicks with associated adults fail, CDPR staff may collect abandoned chicks and transfer them to an approved wildlife facility." It is unclear why the commenter asserts in Attachment 1 that AMM-22 may be needed "due to a reduction in the effort of CDPR attempts to protect nests and move chicks back into the safety of the seasonal exclosures." No reduction in effort is proposed. CDPR will continue to implement and prioritize intensive monitoring and protective measures that focus on protecting at-risk chicks and directing them to safety.

Pursuit or directing chicks to safety as well as capture and captive rearing is a form of take under FESA that requires authorization under an ITP. Captive rearing as proposed by AMM 22 is a new mitigation/intervention included in the HCP for eggs/chicks that are otherwise in harm's way and could otherwise be killed, injured or exposed to the elements. Captive rearing would only be used if the eggs/chicks could not otherwise be protected with AMMs. AMM 22 puts a limit on the number of chicks and eggs that can be handled for capture and captive rearing.

The underlying risk of take of SNPL chicks and eggs from park activities such as motorized recreation and CDPR's directing chicks to safety are baseline conditions. The proposed reduction of the seasonal exclosure (CA-50) could increase the incidents of this activity as described in EIR Volume 1 section 6.3.2.1. Also see Master Response 7: Reduction of Boneyard and 6 Exclosures (CA-50). As proposed under AMM 22, capturing SNPL eggs and chicks that are determined to be in harm's way due to recreation activities and other non-covered species management activities would only occur only if this action is determined to be appropriate by a CDPR Senior Environmental Scientist (EIR Volume 1 section 6.3.2.1). Although data indicate some captive reared SNPL successfully integrate back into the wild SNPL population and breed, the EIR analysis assumes captive rearing is take and that eggs/chicks are removed from the population.

The EIR determines the take impact number is less than significant. Based on the strength of the program, as documented by decades of monitoring, it can be expected that the increase in take anticipated by the HCP activities can be absorbed without significantly diminishing population levels and while continuing to meet SNPL biological objectives. Population gains resulting from the existing program can offset take losses. HCP section 5.5.5 describes the triggers, including the SNPL population threshold, that would require CDPR and USFWS to reevaluate CDPR's management in the HCP area. Immediate responses could include restoring the 6 Exclosure to its original size.

The EIR conclusion of a less than significant impact on SNPL is based on 25 years of data monitoring the population and the effectiveness of the AMMs. USFWS issuance of an ITP requires that the impact has been mitigated to a level of compliance with FESA.

As noted, the take activity is subject to authorization under Fish and Game Code section 86 and would not be pursued without appropriate authorizations.

**Comment A2-4**

As noted above and in Attachment 1, any impacts to State listed plant species without appropriate take authorization would be a violation of CESA and CDFW continues to recommend that CDPR either fully avoid take of State-listed plants or acquire appropriate take authorization. As outlined in the BMP (CDFW 2021), with the ongoing management activities

by CDPR, CDFW recommends this take authorization occur through the completion and approval of a NCCP and that CDPR restrict all activities that could potentially result in take of any State-listed plant species until a NCCP has been approved by CDFW and take authorization pursuant to Fish and Game Code section 2835 has been obtained. Alternatively, or in the meantime, project specific take authority for CESA listed species could be acquired by CDPR through a State incidental Take Permit pursuant to Fish and Game Code section 2081(b). CDFW also recommends that CDPR continue collaborating with CDFW on BMP implementation (CDFW 2021), including plant specific avoidance measures outlined to avoid impacts to State-listed plants while the NCCP is being developed.

Response to Comment A2-4

CDPR has expertise and extensive working knowledge of the locations of the federal- and state-listed plant species in the HCP area. Specific plants are identified in each project activity discussion. As described in EIR Volume 1 section 6.3.2.13, none of the proposed new activities would have significant impacts on state-listed plant species. AMMs and SPRs such as surveys for listed plant species (EIR Volume 3 Appendix B) would be conducted by trained botanists following appropriate established scientific methods, including at appropriate blooming periods, suitable habitats, and potential for occurrence. If CDPR were to propose implementing salvage and relocation of listed plant species (see possible AMMs for Habitat Management Program (CA-16) – Dune Slack Restoration), such measures would be implemented in consultation with CDFW. CDPR has been coordinating with CDFW on rare plant management activities through 2081 (b) authorizations and will continue as needed.

The information presented in this comment does not provide any substantial evidence for CDPR consideration of how the EIR analysis of impacts to State-listed plant species is inadequate and does not change the conclusions in the EIR that the project impact to listed plants is less than significant.

**Comment A2-5**

Evaluation of Impacts to State Listed Plant Species

The revised HCP and RDEIR currently include an evaluation of impacts to State-listed Plant species as group, rather than having a robust analysis of impacts to each of the covered State listed plant species individually. The RDEIR in particular includes a general analysis of impacts to the covered State listed plant species noted above. As these covered activity impact analyses do not focus on individual species and their habitats, it is difficult to ascertain which covered activities may impact which species. It is also difficult to ascertain whether the RDEIR adequately assessed each species bloom period, habitat requirements, potential for occurrence, and potential for covered activity related impacts as part of the impact analysis. As such, CDFW recommends that state-listed plant species be addressed individually rather than combined under a single generic plant section.

Response to Comment A2-5

See response to comment A2-4.

**Comment A2-6**

Special Status Plant Surveys

In addition to this general recommendation, and until appropriate State take authorization has been obtained, CDFW recommends that all areas with potentially suitable habitat be surveyed for

special-status plants by a qualified botanist following the "Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities" (CDFW 2018) prior to initiating any activities that could result in disturbance to the habitat. This protocol, which is intended to maximize detectability, includes identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. In the absence of protocol-level surveys being performed, additional surveys may be necessary. CDFW also recommends these surveys incorporate an appropriate buffer (e.g., 500 meters) around suitable habitat to look for new individuals that may germinate from the seed bank on the periphery of an occurrence. CDFW also recommends that this survey buffer be incorporated as part of the applicable avoidance and minimization measures identified within the revised HCP to further avoid and minimize impacts to special status plant species, including State-listed species.

CDFW also advises special-status plant species be avoided by implementing a minimum 50-foot no-disturbance buffer around the outer edge of plant population(s) or specific habitat type(s) that support special-status plant species. CDFW recommends the 50-foot no-disturbance buffer include indirect impacts such as excessive dust, sedimentation, excessive runoff, or other disturbances that may not result from direct ground-disturbance but could also impact habitat quality habitat. If buffers cannot be maintained, then consultation with CDFW is warranted to determine appropriate minimization and mitigation measures for impacts to special-status plant species, or in the case of plant species listed pursuant to CESA or the Native Plant Protection Act, to determine if take can be avoided.

As stated above, if State-listed plant species are identified during botanical surveys, consultation with CDFW is warranted to determine if the activity can avoid take. If take cannot be avoided, take authorization prior to any ground-disturbing activities would be warranted. Take authorization would occur through issuance of an ITP by CDFW, pursuant to Fish and Game Code section 2081(b) or through the approval of a NCCP pursuant to Fish and Game Code section 2800 et seq.

Response to Comment A2-6

It is unclear from the comment which proposed new activities might warrant implementing buffers or are otherwise inadequately addressed by the analysis in the EIR. See response to comment A2-4.

**Comment A2-7**

Special-Status Plant Avoidance and Minimization Measures

Currently, the revised HCP includes avoidance and minimization measures for special status plant species during implementation of the Habitat Restoration Project (Covered Activity 16) within the HCP area. These measures include survey, avoidance, and salvage/relocation requirements; however, these measures are not specific to the blooming periods, habitat requirements, and relocation/salvage approaches of the covered plant species identified in the revised HCP. In addition to the comments above that CDPR avoid impacts to State-listed plant species until appropriate take authorization is obtained, CDFW recommends that the special-status plant avoidance and minimizations measures outlined for Covered Activity 16 (CA-16) be modified to be specific to each plant species identified in the revised HCP. CDFW is available to assist CDPR with incorporating these species-specific AMMs.

Response to Comment A2-7

Plant AMM 17 (EIR Volume 3 Appendix B) requires surveys of the project area to be conducted by a trained botanist for listed plant species. Trained botanists are knowledgeable on appropriate blooming periods and habitat requirements of listed plant species. Surveys would be conducted during the appropriate bloom periods for listed species. Relocation and salvage approaches would be developed at the time that it is determined in the field that plants are present and would be impacted by the project activity. CDPR has determined no further changes to this AMM is necessary for minimizing potential plant impacts. See also response to comment A2-4.

**Comment A2-8**

CA-16, CA-21, and CA-50 Plant Impacts

Covered activities CA-16, CA-21, and CA-50 have a strong potential to significantly impact special-status plants and their seed banks. Importantly, these covered activities are unlikely to truly be temporary in nature as soil disruption can have long-term and unpredictable impacts on seed banks and plant populations. Mechanical trash removal for instance, has the potential to crush or destroy special-status species, including state-listed surf thistle and beach spectaclepod. CDFW recommends that the RDEIR acknowledge that seed banks may be vulnerable to proposed activities and soil disturbance within 500 meters of areas currently or historically occupied by CESA-listed plants should be considered for surveys outlined above. CDFW also recommends conducting thorough surveys within enclosures for CA-50 to ensure accurate disclosure of potential impacts, and exploring restriction.

Response to Comment A2-8

Dune slack restoration (CA-16) activities at Jack and/or Surprise lakes could impact special-status plants if present in the work area. SPRs and AMMs as listed in EIR Appendix B would be implemented including pre-activity surveys, flagging for avoidance, salvage, and relocation (EIR Volume section 6.3.2.13). The EIR concludes that dune slack restoration would impact a small area relative to the overall habitat available to these species in the HCP area and would be temporary. As a result, the impact is considered less than significant.

Mechanical trash removal (CA-21) and the reduction of Boneyard and 6 exclosures (CA-50) would occur in high visitor use, bare sand areas where special-status plants do not presently occur and are unlikely to occur in the future (EIR Volume 1 section 6.3.2.13). The EIR analysis concludes that the impact of these two activities upon special-status plants or their seed banks is less than significant. Surveys of these areas are deemed unnecessary. No substantial evidence has been provided to support the opinions/observations provided in this comment.

**Comment A2-9**

**Fully Protected Species**

CDFW has jurisdiction over fully protected species of birds, mammals, amphibians, reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. Take of any fully protected species is prohibited, and CDFW cannot authorize their take in association with CDPR's ongoing management activities except under the provisions of a NCCP, 2081.7, or a Memorandum of Understanding for scientific purposes. The HCP area is not currently within an approved NCCP area; 2081.7 does not apply to the development projects outlined in the HCP, and a development project is not considered a scientific purpose. The fully protected CLTE and white-tailed kite (*Elanus leucurus*) are known to occur, nest, and forage within the revised HCP

area. This status, and the absence of a NCCP, precludes CDFW from authorizing any amount of incidental take for fully protected species.

As noted above, CDPR is in the preliminary stages of pursuing a NCCP with CDFW to comply with CESA and has been collaborating on the CDFW and CDPR-approved BMP (CDFW 2021) to assist with implementing measures to avoid and minimize impacts to sensitive biological resources while the NCCP is being developed. As outlined in the BMP (CDFW 2021), CDPR agreed to implement a 300-meter buffer zone around CLTE nests. The revised HCP includes avoidance and minimization measures which requires implementation of a 100-meter buffer around CLTE nests. The revised HCP further clarifies that the 300-meter buffer has previously been implemented as outlined in the BMP (CDFW 2021); however, CDPR concludes the reduced buffer distance within the revised HCP should be sufficiently effective to minimize disturbance. As previously noted in Attachment 1 and agreed upon by CDFW and CDPR in the BMP (CDFW 2021), CDFW strongly recommends that a 300-meter buffer be implemented around CLTE nests in the main exclosure at ODSVRA while take is prohibited (e.g. with no NCCP in place) and in developing the adaptive management measures needed for a NCCP.

Response to Comment A2-9:

CLTE AMM 11 provides for protective fencing at a minimum of 330-feet from a nest site or other distance based on best available site-specific information and in consultation with Wildlife Agencies. CDPR has site-specific information that demonstrates that a smaller buffer is appropriate to provide protection to fully protected species; the HCP use of a 330-foot buffer is based on this site-specific information, which justifies a smaller buffer. The Biodiversity Management Plan section 5.4 presents CDFW's recommended 300-meter buffer to protect CLTE as an interim measure until an NCCP is prepared. See Master Response 10: California Fully Protected Species and NCCP.

**Comment A2-10**

While NOAA Fisheries concluded that the existing covered activities are not anticipated to result in take, the letter acknowledges the potential for steelhead to come into contact with a vehicle. Additionally, the letter does not discuss the potential for indirect impacts to steelhead and assumes that steelhead do not migrate during low flows. CDFW does not concur with NOAA fisheries overall conclusions as CDFW staff have documented juvenile steelhead migration occurring as early as October through as late as June on the descending limb of the hydrograph and under winter base flow conditions within San Luis Obispo Creek. Essentially, CDFW has confirmed, through the use of Passive Integrated Transponder (PIT) tag detection data, that steelhead migration is documented to occur at relatively low flows. This conclusion is further supported in literature, with CDFW's Standard Operating Procedure for Critical Riffle Analysis for Fish Passage in California (2017) document noting that adult steelhead can migrate at depths of 0.7-feet and smolts at 0.4-feet. Based on this information, it is likely that vehicular crossings of Arroyo Grande Creek do occur when steelhead are expected to be migrating and that vehicular crossings could impact steelhead migration.

As discussed above, CDFW does not concur that steelhead take is unlikely with the current revised HCP avoidance and minimization measures. In addition to CDFW's knowledge of steelhead migration in this area, CDPR's current steelhead survey approach, which incorporates seining surveys in shallow, wadable waters, and which does not allow for an estimation of population size, is likely insufficient to accurately detect steelhead presence and population trend

information. Further, direct steelhead take via vehicle crossings would be extremely difficult to detect and would likely be undetectable through CDPR's current monitoring efforts.

There are, at times, thousands of vehicular crossings daily at Arroyo Grande Creek during the migratory season (generally December - June), and these crossings are likely to interrupt both migration and potential take steelhead individuals. There is evidence of steelhead take, as documented by CDPR staff, in recent years at the Arroyo Grande Creek mouth (March, 2012; January 28, 2021; March 26, 2024; March 5, 2025), although the cause of death was determined to be unknown given the circumstances around detection. Finally, in addition to direct vehicle strikes on steelhead and tidewater goby, indirect effects from vehicle noise, physical disturbance within the stream, potential water pollution and light pollution (at night) from vehicles, are all likely to impact steelhead movement and migration. To partially address these concerns, the BMP (CDFW 2021) includes measures to further avoid and minimize impacts to both steelhead tidewater goby.

Response to Comment A2-10

This is a comment on existing park management operations and not a comment on proposed new project activities. Steelhead is not a covered species in the HCP, and vehicle creek crossing (CA-40) is not a new activity proposed for approval. See Master Response 6: CEQA Baseline and Scope. It is outside the purview of this EIR to analyze impacts to existing park operations.

This comment also includes inaccurate information about take of steelhead that must be corrected. In 2012, 2021, 2024 and 2025, steelhead were found dead near the Arroyo Grande Creek mouth or on the adjacent shoreline in the surf zone, but there is no evidence that these carcasses were a result of any covered activity, including vehicle crossing of the creek. CDPR reviewed the four instances cited, including CDFW Fish Health Laboratory reports on the specimens from 2021 and 2025. The results from the pathology reports stated the cause of mortality is inconclusive but unlikely due to crushing trauma or vehicle strike. After reviewing past records, CDPR confirms that there is no substantial evidence that covered activities caused take to steelhead trout from 2012-2025. There is speculation of indirect effects to steelhead from public activity and vehicle crossing, but there is no evidence of take.

CDPR coordination with CDFW on the Biodiversity Management Plan is ongoing but is outside the scope of this EIR. This coordination includes adaptive management to modify operations as needed as new information becomes available on managing impacts to steelhead or tidewater goby.

**Comment A2-11**

As outlined in the BMP (CDFW 2021), and partially specified in several avoidance and minimization measures for tidewater goby in the revised HCP, CDPR committed to implementing the following measures to avoid and minimize impacts to steelhead and tidewater goby:

1. Closure of the Arroyo Grande Creek crossing to vehicles based on a hydrologic trigger (with a public health and safety exception). Currently the closure would trigger at a depth of 12 inches, pending further protective measures like installation of a crossing structure and further fisheries study.

2. Commitment to evaluating a potential mobile stream crossing structure for Arroyo Grande Creek as soon as possible to reduce vehicle impacts contingent on completion of a feasibility

study analyzing costs, design, and operational considerations. However, CDFW is aware that a feasibility study has since been conducted and it determined a crossing structure infeasible due to the necessary bridge length and number of spans. As such, a crossing structure was removed from consideration.

3. Increased use of technology for outreach on stream crossing through design and utilization of the CPS reservation e-system. This increased outreach can facilitate greater advance notice to campers and recreationalists when a depth-criteria will trigger a prohibition on vehicles crossing the stream.

4. Develop and implement a study to gather site specific information and foster adaptive management concerning these measures and long-term impacts of vehicle crossings on the stream and species.

The BMP (CDFW 2021) also notes that these measures should be re-evaluated in conjunction with the possible construction of a third access point at the southern end of the HCP area.

While CDFW acknowledges that CDPR has committed to incorporating the measures within the BMP (CDFW 2021), and is implementing portions of the BMP (CDFW 2021) pertaining to steelhead and tidewater goby, CDFW recommends the following measures to re-evaluate and modify what was originally recommended given the infeasibility of a crossing structure and subsequent information gathered by CDFW:

Response to Comment A2-11

This is a comment on existing park management operations and not a comment on proposed new project activities. Steelhead is not a covered species in the HCP, and vehicle creek crossing (CA-40) is not a new activity proposed for approval. See Master Response 6: CEQA Baseline and Scope. It is outside the purview of this EIR to analyze impacts to existing park operations.

See response to Comment A2-10. See also Master Response 14: Discussion of Alternatives.

**Comment A2-12**

Implementation of CDFW Tool to Avoid Steelhead and Tidewater Goby Take

CDFW recommends that CDPR update the Arroyo Grande Creek crossing closure criteria from the current water depth threshold of 12 inches. CDFW recently updated the creek crossing closure analyses and recommends that CDPR use the tool outlined in the 2025 CDFW memorandum (Attachment 2) shared with CDPR to determine when to close vehicle crossing at Arroyo Grande Creek. This tool was developed using topographic, stream stage/discharge, and tidal stage data to inform when conditions are particularly conducive to steelhead migration and includes depth criteria for steelhead which is consistent with CDFW's Standard Operating Procedure for Critical Riffle Analysis for Fish Passage in California (CDFW 2017). This tool would allow for greater accuracy and consistency and would reduce vehicle impacts to steelhead and tidewater goby and is consistent with the recommendations outlined above. Additionally, this tool has the added benefit of informing when hydrological conditions at the vehicular crossing may present a public safety concern and does not require State Parks staff to conduct physical depth measurements at the vehicle crossing. CDFW also recommends that CDPR coordinate with CDFW Central Region Fisheries staff for implementation of this tool and that this same approach be utilized to determine when to implement vehicle crossing closures for Pismo and Oso Flaco Creeks.

Response to Comment A2-12

This is a comment on existing park management operations and not a comment on proposed new project activities. Steelhead is not a covered species in the HCP, and vehicle creek crossing (CA-40) is not a new activity proposed for approval. See Master Response 6: CEQA Baseline and Scope. It is outside the purview of this EIR to analyze impacts to existing park operations.

See response to comment A2-10.

**Comment A2-13**

Notification of Steelhead and Tidewater Goby Take

CDFW recommends that the revised HCP and RDEIR include measures that necessitate routine water quality monitoring of the Arroyo Grande Creek crossing and lagoon immediately during and/or after steelhead and tidewater goby fish kills. Collection of water quality (and fish) data is essential for helping to determine the potential cause of fish kills.

Response to Comment A2-13

Water quality monitoring for effects of existing operations (baseline conditions) is outside the scope of the EIR. See response to comment A2-10.

**Comment A2-14**

Arroyo Grande Creek Camera Monitoring

The revised HCP and RDEIR notes that Arroyo Grande Creek can only be crossed using street-legal vehicles and such vehicles are prohibited from crossing Arroyo Grande Creek in any manner other than by crossing the creek as close to the ocean waterline as possible and parallel to the ocean waterline. Driving upstream or downstream in the creek channel or in any other manner in the creek channel is prohibited, and a closure would be implemented if water depth exceeds 12 inches as measured closest to the water line. Additionally, CDPR is currently working to gain a better understanding of Arroyo Grande Creek vehicle use and associated impacts to fish migration and outmigration as part of the ongoing studies identified in the BMP (CDFW 2021). These studies are being conducted in collaboration with CDFW. CDFW has provided CDPR with updated Arroyo Grande Creek closure recommendations; continuing to rely upon the interim 12-inch depth criteria identified in the BMP (CDFW 2021) is likely insufficient to prevent impacts to steelhead from vehicular crossings, particularly given that installation/construction of a stream crossing structure has been deemed infeasible by CDPR. Further, current reporting/data collection efforts of the crossing depth and related potential steelhead and tidewater goby take are insufficient to inform management actions. As such, CDFW recommends that CDPR install a camera at the mouth of Arroyo Grande Creek to quantify the number of vehicular crossing each day during the steelhead migratory season (generally, December through June). CDFW is available to assist with camera placement efforts.

Response to Comment A2-14

Arroyo Grande Creek monitoring for effects of existing operations (baseline conditions) is outside the scope of the EIR. See response to comment A2-10. Also see Master Response 6: CEQA Baseline and Scope regarding vehicle crossing of Arroyo Grande Creek.

**Comment A2-15**

Fisheries Monitoring

The revised HCP and RDEIR note that fisheries surveys have been ongoing within Arroyo Grande Creek and estuary since 2003 and the primary purpose is to document native fish populations in the HCP area. In addition, these surveys are intended to gather information about various species' use of the habitats within the HCP area, evaluate whether covered activities may be impacting fisheries and aquatic habitat, and document the impacts of habitat disturbance caused by upstream water management activities. The revised HCP notes that seining would include approximately 10 to 15 seine hauls among the various waters surveyed and the seine would typically be swept in an arc, with a set pivot point on shore, or dragged across or longitudinally along pool areas that are accessible and unimpeded by vegetation or debris. CDFW is concerned that the current fisheries monitoring excludes areas of lagoons that are unwadable; which limits the surveyed area to areas less than approximately 5 feet deep and thus may be missing habitat that is most likely to contain steelhead. It should be noted that previous surveys are likely not sufficient to support a determination of absence of steelhead in Arroyo Grande and Pismo Creek lagoons. Additionally, CDPR's fish monitoring surveys provide qualitative data on species presence, but do not provide quantitative data on fish populations, making it difficult to infer any population changes over time.

As such, CDFW recommends that surveys implement seining techniques that are designed to capture the breadth of fish species present (including steelhead) and are able to detect changes in population size. CDFW recommends surveys utilize a taller/longer seine than is currently used and hauling the deep end of the seine with a jon boat or canoe to adequately sample deep areas of the lagoon that are unwadable, as this habitat may be more likely to hold steelhead. Regarding study design, CDFW recommends using a mark-recapture design such as that described in Frechette et al. (2016). Additionally, with properly experienced and trained biologists that have appropriate State and federal permits, CDPR could implant steelhead with Passive Integrated Transponder (PIT) tags during these surveys, and PIT antennae could be operated to assess steelhead movement in and out of the Arroyo Grande Creek lagoon. A DIDSON Sonar camera or weir/trap installed upstream of the lagoon could provide insights into adult steelhead population status, trend, and migration timing. Lagoon surveys should also include a water quality monitoring component -- routine water quality profiles of salinity, temperature, and dissolved oxygen (taken every 0.25 meter across the water column), along with a Secchi depth reading (to assess water clarity) to monitor/assess the lagoons' suitability for steelhead (and other aquatic species). CDFW also recommends that seine surveys for steelhead be conducted separately from tidewater goby surveys, as differences in these species biology and ecology may dictate the use of different seine sizes, sampling locations, and study designs.

Response to Comment A2-15

Monitoring for effects of existing operations (baseline conditions) is outside the scope of the EIR. See response to comment A2-10.

**Comment A2-16**

Steelhead and Tidewater Goby Lagoon Restoration

CDFW is aware of ongoing discussions between CDFW and San Luis Obispo County regarding restoration within the Arroyo Grande Creek lagoon. For future steelhead and tidewater goby restoration work, CDFW recommends against utilizing a simplistic restoration approach that is

solely focused on increasing hydrological connectivity and circulation between water bodies of the lagoon complex within the HPC area. This type of simplistic restoration approach resulted in decades of annual fish kills (and severe reduction of California red-legged frog) at Pescadero State Beach in San Mateo County due to toxic salinity levels within the lagoons (Smith and Reis 1997, Sloan 2006, Smith 2009). Instead, CDFW recommends that restoration goals maximize habitat for steelhead and tidewater goby and focus on restoration methods that provide sufficient depth; transition habitat that facilitates salinity stratification during the migration period; healthy water quality that contains salinity destratification during the summer and fall, sufficient dissolved oxygen, and appropriate temperatures in 0.25-meter increments in the water column and secchi depth; and hydrologic connection between Arroyo Grande Creek during the annual steelhead migration period (December 1 through June 15). CDFW also recommends that CDPR and San Luis Obispo County staff coordinate with CDFW fisheries staff during the development and implementation of lagoon restoration work within the HCP area.

Response to Comment A2-16

Restoration of Arroyo Grande Creek Lagoon is outside the scope of the EIR. See response to comment A2-10. San Luis Obispo County Public Works is working on a project to restore portions of lower Meadow Creek and establish hydrologic connection between lower Meadow Creek and Arroyo Grande Creek. That is a process entirely led by the County, although it plans projects on County and State-owned lands, including lands covered in the HCP. This project was not listed as a Covered Activity in the HCP, and the EIR does not analyze impacts from this possible future activity. If this project were to move forward, the County would be responsible for securing permits and environmental review for the effort.

**Comment A2-17**

Crotch's Bumble Bee

[…] The HCP area is within the geographic range of Crotch's bumble bee (CBB) and portions of the site contains habitat that may support CBB. CBB are known to inhabit areas of grasslands, scrub, and riparian, that contain requisite habitat elements for nesting, such as small mammal burrows and bunch/thatched grasses, and these habitat elements may be present within the HCP Area.

Currently, the revised HCP and RDEIR do not contain evaluation of CBB, and avoidance and no mitigation measures are proposed. As such, CDFW recommends that CDPR incorporate the following measures prior to initiating any development activities in any areas where CBB may occur:

CBB Habitat Assessments

CDFW recommends a qualified biologist conduct a habitat assessment to determine if the development area and the immediate surrounding vicinity contain habitat suitable to support CBB. Potential nesting sites, which include all small mammal burrows, perennial bunch grasses, thatched annual grasses, brush piles, old bird nests, dead trees, and hollow logs would need to be documented as part of the assessment.

CBB Surveys

If potentially suitable habitat is identified, CDFW recommends that a qualified biologist conduct focused surveys for CBB, and their requisite habitat features following the methodology outlined

in the Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (CDFW 2023).

CBB Avoidance and Consultation

If CBB is detected, then CDFW recommends that all small mammal burrows and thatched/bunch grasses be avoided by a minimum of 50 feet to avoid take and potentially significant impacts. If ground-disturbing activities will occur during the overwintering period (October through February), consultation with CDFW is warranted to discuss how to implement covered activities and avoid take. Any detection of CBB prior to or during covered activities warrants consultation with CDFW to discuss how to avoid take. If project specific take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA, until an NCCP has been approved by CDFW and take authorization pursuant to Fish and Game Code section 2835 has been obtained from CDFW.

Response to Comment A2-17

Although the HCP area is within the historic range of Crotch's bumble bee (CBB), the species is not known to occur there. The Oceano Dunes Wildlife Habitat Protection Plan (WHPP) provides for CBB surveys as time and staff allow using the reference guide: Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (CDFW 2023). If found to be present in the HCP area, any new information would be incorporated into pre-construction surveys as called for in the SPRs (EIR Volume 3 Appendix B):

> Prior to the start of on-site project activities, [a DPR Natural Resources Specialist] will conduct a survey of the project area using appropriate established scientific methods for detection of [special-status species, nesting birds, roosting bats, and other sensitive habitats or jurisdictional waters in the project area].

CA-16 Dune Slack Restoration is the only proposed project activity that could potentially remove vegetation within the CBB historic range. SPRs for new activities would cover potential impacts to CBB. CDPR considered the information in the comment and concludes that proposed new and future covered activities in the HCP would not significantly impact CBB. The EIR conclusion of no significant biological impacts to special-status species remains unchanged.

**Comment A2-18**

The Use of UAS: The RDEIR and revised HCP proposes to allow drones and other unmanned aircraft in the HCP area to reduce the time and cost of data collection …As highlighted in the RDEIR and agreed to by CDPR in the BMP (CDFW 2021), CDFW recommends that CDPR restrict UAS flights during the nesting season in known nesting areas until the NCCP has been approved by CDFW and take authorization pursuant to Fish and Game Code section 2835 has been obtained from CDFW.

Response to Comment A2-18

See Master Response 10: California Fully Protected Species and NCCP. The Biodiversity Management Plan includes recommendations for expanded protection of biological resources until an NCCP is prepared.

**Comment A2-19**

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database, which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special-status species and natural communities detected during surveys to the California Natural Diversity Database (CNDDB). The CNDDB field survey form can be filled out and submitted online at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Submitting-Data. The types of information reported to the CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Plants-and-Animals.

Response to Comment A2-19

CDPR conducts surveys as needed for specific project activities. Results of detected special-status species are reported to CNDDB as required and will continue to be reported in the future.

**Comment A2-20**

FILING FEES

Covered activities outlined in the HCP, as proposed, would have an impact on fish and/or wildlife, and an assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the lead agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

Response to Comment A2-20

As noted, Lead Agencies pay CDFW fees at the time of filing a Notice of Determination (NOD).

**Comment A2-21**

CONCLUSION

CDFW appreciates the opportunity to comment on the RDEIR and revised HCP to assist CDPR in identifying and mitigating the HCP's impacts on biological resources. CDFW recommends that CDPR continue to coordinate with CDFW to obtain a NCCP and that CDPR restrict all activities that could potentially result in take of any fully protected species until a NCCP has been approved by CDFW and take authorization pursuant to Fish and Game Code section 2835 has been obtained from CDFW. In the approval of a NCCP and the authorization of the taking of species listed in the NCCP, including but not limited to CLTE and SNPL, the requirements for the approval of the NCCP must be met in accordance with Fish and Game Code sections 2820 and 2821. This includes the integration of specific conservation actions to meet the biological needs of species, protection of habitat through the creation and permanent protection of habitat reserves, and funding for perpetual adaptive management. It is important to note that additional minimization and mitigation measures for several species beyond those included in the RDEIR and revised HCP would likely be required for approval of an NCCP that includes those species. Further, CDFW recommends that CDPR initiate standing NCCP meetings with CDFW to substantially aid progress in working towards acquisition of an NCCP.

A Mitigation and Monitoring Program (MMRP) (Attachment 3) is included to assist CDPR with incorporating the recommended mitigation measures provided above. If you have any questions regarding this letter or further coordination, please contact Evelyn Barajas-Perez, Environmental Scientist, at the address provided on this letterhead, by telephone at (805) 503-5738 or evelyn.barajas-perez@wildlife.ca.gov.

Response to Comment A2-21:

As described in response to the comments above, the EIR has determined that the HCP fully avoids, minimizes, and mitigates the potential significant impacts on biological resources. The effectiveness of these measures has been demonstrated by successful implementation of the existing conservation program. Scientific data and literature review support the conclusions that the proposed new activities would not significantly impact state fully protected species or their habitat. CDPR's conclusion is based on substantial evidence as described in the HCP and EIR.

CDFW is a Responsible Agency on this project for issuance of a scientific collection permit for the HCP covered activity of SNPL chick and egg capture and relocation to captive rearing if observed to be threatened by covered activities (CA-12b). This collection is a protective action, and its effects are fully analyzed in the EIR. CDFW has provided no comment specifically on the deficiencies of the EIR in addressing this impact. The EIR is sufficient for CDFW to utilize as a CEQA document in assessing the Responsible Agency action to issue a scientific collection permit needed for this activity.

As discussed in Master Response 10: California Fully Protected Species and NCCP, CDPR is committed to a successful NCCP process.

### 3.1.4 Comment Letter A3. San Luis Obispo County Air Pollution Control District

#### Comment A3-1

General Comments

Overall, the District is pleased to see air quality impacts are considered in the HCP and DEIR. Regarding the mechanical raking component of the General Facility Maintenance activity (CA-21), we agree that air quality impacts are likely negligible, as long as raking is confined to the camping and open riding area, where the sand surface is already disturbed by vehicular activity. Our comment letter on the 2020 HCP draft expressed concerns over the air quality impacts of this activity, however, a study has since demonstrated that mechanical ranking does not increase emissions from sand surfaces that are already disturbed by off-roading. This study was conducted by Desert Research Institute (DRI) and the employed methodology developed by the Scientific Advisory Group (SAG) established under the SOA.

The District also agrees that the Limited Trail Riding activity (CA-42) is likely to have a less than significant impact on air quality. We are encouraged that Dust Control Activities (CA-44) are included in the HCP, and we generally agree with how they are described. The Reduction of Boneyard and 6 Exclosures activity (CA-50) will be discussed in more detail later, but we are encouraged that the HCP's discussion of this activity always includes the caveat that it would be implemented only "if opening the area is consistent with the requirements of other programs," which we take to include compliance with the SOA.

Response to Comment A3-1

The comment provides general remarks that are consistent with and generally support the findings of the air quality analysis presented in the EIR. See detailed responses to comments A3-2 through A3-5 below. No further response is required.

**Comment A3-2**

Disposition of the Southern Exclosure

The Southern Exclosure is the approximately 300-acre area that State Parks calls the "Plover Exclosure" in other contexts, including the Annual Reports and Work Plans (ARWPs) prepared under the SOA. For at least two decades, the Southern Exclosure has been closed to vehicles and pedestrians at least seasonally to protect western snowy plovers (SNPL) and California least terns (CLTE), two special status bird species. Until 2021 vehicle and pedestrian access to the Southern Exclosure was allowed from October 1 through the end of February, but the area has been closed to vehicles and pedestrian year-round since then. The HCP and DEIR—as well as the related Environmental Assessment (EA) prepared by the U.S. Fish and Wildlife Services in accordance with the National Environmental Policy Act—are not clear about this and tend to discuss the Southern Exclosure as though vehicular activity and camping continue to be allowed there seasonally. Examples include, but are not limited to:

[…]

In these examples and elsewhere in the HCP, DEIR, and EA, the Southern Exclosure is portrayed as currently open to vehicles on a seasonal basis, when, in fact, vehicles have not been allowed in the area since 2021. This reality is occasionally acknowledged in the documents, but generally only in footnotes and parentheticals, and the alternatives analyses within the documents nonetheless assume that seasonal access has continued.

Response to Comment A3-2

CDPR acknowledges the extended implementation of the temporary year-round closure but disagrees with the commenter's assertion regarding the correct baseline. See Master Response 6: CEQA Baseline and Scope regarding year-round closure. Given that seasonal implementation of the nesting exclosures is the longstanding and proposed protocol under the HCP, CDPR has determined that seasonal operation reflects the correct baseline for analysis in the EIR. No change to the EIR analysis is required.

**Comment A3-3**

Understanding the disposition of the Southern Exclosure is important for at least three reasons:

1. Context for Biological Trends. State Parks tracks various statistics related to SNPL and CLTE including the number of nests, breeding pairs, and fledged chicks. The year-round closure of the Southern Exclosure has resulted in the development of hummocks and the growth of dune vegetation; these changes provide dust control benefits but, according to State Parks, could also degrade habitat for SNPL and CLTE. The trends in biological indicators of these species should be interpreted with accurate knowledge of the status of the Southern Exclosure in mind. While the new hummocks and vegetation appear to have changed nesting patterns, it is not clear from looking at the graphs in the HCP that long-term trends in biological indicators have been adversely affected.

2. Alternatives Analysis. As required by statute, the DEIR evaluates various alternative projects. The analysis uses seasonal management of Southern Exclosure as the baseline or current condition of this area; however, by the time the HCP and DEIR are approved, the area will have been closed to vehicles for at least 5 years (i.e., since 2021 through at least 2026). Thus, the analysis of alternatives may be defective. For example, DEIR section 9.2.3, Alternative 3, "Permanent Year-Round Southern Exclosures," states that "This loss of recreation opportunity under the Permanent Year-Round Exclosure Alternative would combine with the Dust Control Program recreational acreage reduction to potentially create a significant and unavoidable cumulative loss of recreation opportunity." However, the area is already closed, so there would be no new loss of recreation opportunity.

3. Air Quality Impacts of CA-50. The air quality impact of CA-50—the opening the 6 Exclosure and Boneyard to year-round vehicular activity—will be underestimated if the baseline is incorrectly assumed to be seasonal management. Under the SOA, State Parks must achieve certain emission reductions by October 2028, so any increase in dust emissions associated with CA-50 will need to be offset elsewhere in the Park in order to remain in compliance with the SOA.

Response to Comment A3-4

See response to comment A3-3. CDPR acknowledges the importance of correctly identifying the status of the Southern Exclosure and its implications for the environmental impact analyses contained in the EIR

**Comment A3-4**

Reduction of the Boneyard and 6 Exclosures (CA-50)

The District has concerns with CA-50, the planned reduction in size of the Southern Exclosure. As discussed above, the entire Southern Exclosure has been closed to vehicles and camping since 2021, though it previously was open to these activities seasonally. While the closure was unrelated to air quality, it nonetheless has had beneficial impacts on air quality, and State Parks has therefore sought to "credit" the resulting emission reductions toward achieving the SOA-mandated emission reduction goal. The 300-acre closure is thus an integral part of State Parks' most recent ARWP, and for this reason the District's approval of the ARWP included a condition requiring that "If the [Southern] Exclosure area, in whole or in part, is reopened to public vehicular access, State Parks shall simultaneously implement District-approved dust controls sufficient to offset the resulting increase in emissions."

Thus, to simply return the Southern Exclosure to seasonal vehicular access will require State Parks to implement offsetting emission reductions (i.e., dust control projects); to additionally open portions of the area to year-round vehicular access will require even more new dust controls. These controls would likely consist of installing vegetation in bare sand areas and/or reducing the area of the ODSVRA available for off-roading. Given the low emissivity of bare sand areas outside of the current riding area, the District is skeptical that State Parks can comply with the SOA while implementing CA-50 unless further restrictions are imposed on vehicular access elsewhere in the Park.

According to the HCP, the primary motivation for opening the Boneyard and 6 Exclosure to year-round access is to enhance recreational opportunities, but this may amount to "robbing Peter to pay Paul" if recreational opportunities must be lost elsewhere in the Park to maintain compliance with the SOA. The EA fails to account for this possibility in its analysis of the

impact of CA-50 on recreation (DEIR Section 8.3). Therefore, the conclusion that CA-50 will have a beneficial impact on recreation may be erroneous.

Regarding the analysis of air quality impacts of CA-50, Mitigation Measure AIR-1 is proposed to "ensure emissions from the Oceano Dunes SVRA, inclusive of CA-50 activities, continue to comply with SOA #17-01." Overall the approach in AIR-1, as described in the DEIR, appears adequate; however, please note that, per the District's approval of State Parks' 2025 ARWP, offsetting dust controls are required to be installed before opening any of the Southern Exclosure to vehicular access, not after.

Response to Comment A3-4

The comment summarizes the analysis and results contained in the ARWP with respect to how dust emissions from the ODSVRA might change if the Southern Exclosure were to be opened, or partially opened, to seasonal or year-round vehicular access. EIR Volume 1 section 5.2.4 includes detailed information about the ARWP process, including how the ARWP would address planned reopening of the exclosure and other Dust Control Program activities over time. See Master Response 8: Dust Control Program (CA-44). The comment does not present any new substantial evidence for CDPR consideration that changes the analysis presented in the EIR.

**Comment A3-5**

Finally, the District questions the rationale for rejecting the project alternatives that would leave the Southern Exclosure intact, with or without seasonal vehicular access. The alternative with CA-50 removed from the list of activities ("Alternative 2: Reduced Disturbance in Dust Emission Areas") was rejected because it allegedly conflicts with the 2005 Consent Decree between State Parks and the Sierra Club and "thus does not achieve the project objective of facilitating implementation of legal settlement conditions and obligations." (DEIR page 9-13.)

The District has reviewed the consent decree, and while reducing the extent of the 6 Exclosure is consistent with the terms of the consent decree, we did not find language that requires it. The third term of the consent decree states, in part, that "State Parks shall support a northern [Southern Exclosure] boundary of Distance Marker Number 7 in the HCP Process, notwithstanding the terms of this Consent Decree." State Parks appears to interpret this as meaning they are required to reduce and ultimately eliminate the 6 Exclosure. However, this interpretation stands the intent of the consent decree on its head. The consent decree stems from a lawsuit brought by the Sierra Club alleging that State Parks was violating the Endangered Species Act by allowing a take of SNPL and CLTE without a valid ITP. Protecting these species by expanding the Seasonal Exclosure to its present boundaries is a key element of the consent decree. Understood in this context, the third term allows State Parks to propose a northern boundary no further south than Marker 7 in the HCP, but it does not preclude leaving the Southern Exclosure as it is today.

In fact, in their comments on State Parks' 2018 Preliminary Scoping Report for the HCP, the Sierra Club specifically opposed the proposal to shrink the Southern Exclosure. They state, "The proposed alternative that would reduce current nesting and breeding snowy plover and least tern habitat must be eliminated from further consideration and, instead, the [U.S. Fish and Wildlife] Service should consider expanding the protected area and making the protection year-round." (DEIR Appendix A, page A-89.)

Finally, regardless of how the third term of the consent decree is interpreted, it applies only to the 6 Exclosure, i.e., the northernmost section of the Southern Exclosure. There is nothing in the

consent decree about the Boneyard Exclosure, so compliance with the consent decree cannot be used as a rationale for removing that area from the Southern Exclosure.

Response to Comment A3-5

See Master Response 7: Reduction of Boneyard and 6 Exclosures.

**Comment A3-6**

Habitat Manipulation

The HCP contemplates habitat manipulation activities within the Southern Exclosure that could have air quality impacts, but these impacts are not considered in the DEIR. For example, the description of CA-12b on HCP page 2-24 states that State Parks "anticipates needing to remove during the non-breeding season the non-native sea rocket and larger dune hummocks in heavily vegetated areas where nesting has reduced in the Southern Exclosure." The scope of such manipulation could exceed 5 acres/year. Certain Avoidance, Minimization, and Mitigation Measures (AMMs) also plan for these activities, specifically SNPL AMM 46 (HCP page 5-24 and Table 5-2) and CLTE AMM 37 (HCP page 5-36 and Table 5-3). The development of surface roughness (i.e., vegetation) and topography (i.e., hummocks) in the Southern Exclosure has reduced the potential for dust generation under high winds and thus improved air quality. Therefore, undoing these changes will necessarily have air quality impacts, which the DEIR has neglected to consider. DEIR Section 5.3 discusses the potential increase in vehicle trips related to CA-12b (concluding they their impact is insignificant) but no mention is made of habitat manipulation. The DEIR should be revised to consider these air quality impacts.

Response to Comment A3-6

The comment indicates that modifications to habitat enhancement activities could have air quality impacts that are not considered in the EIR. However, the full description of this covered activity, i.e. CA-12b, states that such activities would be developed in consideration of compliance with all regulatory and program requirements, including the Dust Control Program and compliance with the SOA. Since the Dust Control Program is a comprehensive program for addressing dust control throughout the whole of the ODSVRA, any changes in surface emissivity that may occur, whether by natural variation or as the direct result of a covered activity, would be captured and addressed in the ARWP process. See Master Response 8: Dust Control Program (CA-44) regarding the ARWP process.

**Comment A3-7**

New Dune Vegetation

The description of Dust Control Activities (CA-44) on HCP page 2-42 states that "for the purposes of this HCP, Dust Control Program covered activities include: Continued implementation of annual Dust Control Program activities … Supplemental foredune planting … New non-foredune vegetation plantings and seasonal and/or temporary dust control measures … Preservation of foredune vegetation in the Southern Exclosure … New track-out control." The District agrees that these are ongoing and/or possible future dust control activities that are or may become necessary to achieve compliance with the SOA and air quality goals. However, not mentioned is the possibility of new foredune vegetation plantings outside of the 48-acre foredune restoration area. No such projects are currently being considered, but it is possible that such planting could become necessary in the future, especially if dust controls already in place are scaled back (for example, as envisioned in CA-50). As quoted above, the draft HCP does not

explicitly state that the list of Dust Control Program covered activities is all-inclusive. Therefore, if approved, the HCP should not be interpreted to preclude the possibility of foredune planting outside of the current 48-acre area. Simply put: the HCP should not be used to limit the scope of future dust control measures—all possible tools should remain available.

Response to Comment A3-7

The comment indicates that CA-44 does not specifically include new foredune planting as a dust control covered activity. The comment also acknowledges that new foredune planting, outside of the foredune restoration area, is not currently being considered. All current or future dust control activities necessary to achieve or maintain compliance with the SOA are reported and discussed in the ARWP. While new foredune planting is not currently being considered as a dust control activity, CDPR may consider potential new dust control measures, including foredune plantings, as need to comply with the SOA, and would report on such considerations as part of the ARWP and/or subsequent ARWPs. Additionally, as noted in the HCP, all ARWP dust control projects would need to comply with all other regulatory requirements to be viable dust control projects. See Master Response 8: Dust Control Program (CA-44) regarding the ARWP process.

**Comment A3-8**

DEIR page 5-9 refers to District "Rule 402, Nuisance, Visible Emissions." Rule 402 is simply Nuisance; Rule 401 is Visible Emissions.

Response to Comment A3-8

Comment noted. The EIR text has been corrected. See EIR Volume 1.

**Comment A3-9**

DEIR page 5-11 states that "The 2022 ARWP showed that, under certain modeling scenarios, State Parks had achieved the SOA's initial target to reduce 24-hour PM10 mass emissions by 50%." This statement should be struck from the DEIR as the modeling scenarios that it refers to were found to be unrepresentative, "apples-to-oranges" comparisons, and not relevant to determining compliance with the SOA. Key assumptions in the modeling for 2022 ARWP are no longer used in the current model.

Response to Comment A3-9

Comment noted. The EIR text has been updated to clarify the progress made, as stated in the 2022 ARWP, towards achieving the 50% reduction in baseline mass emissions. See EIR Volume 1.

**Comment A3-10**

DEIR page 5-18 states that "the results of the modeling indicated Oceano Dunes SVRA is in compliance with the SOA, as amended." While this is the conclusion of the most recent ARWPs, please note that the District has not yet concurred. The District's position is that State Parks may or may not be in compliance with the SOA's emissions reduction goal—additional information is needed to make the assessment. Under the SOA, State Parks has until October 16, 2028, to obtain the approval of the District's Hearing Board that the approved excess emissions goal has been met.

Response to Comment A3-10

The comment remarks that additional information is needed to assess compliance with the SOA despite the results and conclusions shown in the 2024 and 2025 ARWPs. While the comment is noted, no specific comment is presented on the content of the HCP or analysis in the EIR. No further response is required.

**Comment A3-11**

DEIR page 5-19 states that State Parks "coordinated with the SAG and the DRI to adjust the 2025 ARWP excess emissions model to reflect a seasonal recreation status for the plover exclosure." This may not be accurate and may need revision. In conversations with SAG members, they expressed no knowledge of the HCP and DEIR and stated they were not consulted. The District needs more information to assess the validity of the emissions calculations in this section and takes no position on them at this time.

Response to Comment A3-11

The comment claims the coordination between State Parks and the SAG to adjust the 2025 ARWP excess emissions estimates to reflect a seasonal recreation status for the plover exclosure discussed in the EIR may not be accurate. The Draft 2025 ARWP submitted to the SLOAPCD for review on Augst 15, 2025, contained a discussion section, Draft 2025 ARWP Section 3.1, titled "Return of Plover Exclosure to Seasonal Closure Status," which included a discussion regarding the assumed emissivity relation for the SNPL seasonal exclosure that was provided to State Parks by the SAG. The EIR text has been updated to clarify the nature of the SAG-developed emissivity relations to address potential changes in emissivity associated with a seasonal recreation status for the SNPL exclosure. See EIR Volume 1.

**Comment A3-12**

Regarding DEIR Section 5.3.2, the District commends State Parks for thinking ahead about the potential emissions changes related to CA-50, but we need more information to assess the calculations in this section.

Response to Comment A3-12

The comment requests more information regarding the calculations for potential changes in emissions associated with implementation of CA-50. The DRI document (DRI 2025) referenced in EIR Volume 1 section 5.3.2 Table 5-6 contains additional information regarding the excess emissions estimates modeled for implementation of CA-50. Please refer to this document for more information regarding the calculations for potential changes in emissions associated with implementation of CA-50.

**Comment A3-13**

DEIR Section 8.2.3 begins "The California Coastal Act defines 'coastal-dependent development or use' to mean any development or use that requires a site on, or adjacent to, the sea to be able to function at all (PRC § 30101). CDPR considers beach- and dune-oriented recreational opportunities to be coastal-dependent recreation activities." It then includes "beach and coastal dune vehicular recreation" in a list of coastal-dependent recreational activities. However, merely appending the phrase "coastal dune" to an activity does not thereby confer special status or protections to that activity. While certain activities listed in this section—fishing, viewing marine wildlife, and kite boarding—are indeed coastal-dependent, this is because they require proximity to the sea to function at all. In contrast, vehicular recreation is not dependent on the coastal

environment, nor does it become so through an act of labeling or stipulation. By logic of the DEIR, nearly any activity that can occur on a beach could be defined as coastal-dependent and entitled to the protections and privileges of the Coastal Act and/or CEQA.

We point this out because later in Section 8.3 the document defines as a significant environmental impact anything that would "Substantially limit, reduce, or interfere with established coastal recreational opportunities." Then in Chapter 9, alternative projects are considered and rejected specifically because of significant impacts on coastal dune vehicular recreation. Such arguments are question begging, or circular, and should be rejected.

Response to Comment A3-13

EIR Volume 1 section 8.2.3 footnote 46 acknowledges that San Luis Obispo County and the Coastal Commission have jurisdiction over the Coastal Act and as such may or may not find these activities to be coastal-dependent uses.

CEQA Guidelines allow for a Lead Agency to establish significance thresholds beyond those listed in CEQA Guidelines Appendix G. See Master Response 15: Recreation Impact Significance Threshold. The commenter omitted that the significance threshold identified in EIR Volume 1 section 8.3 also includes impact to recreational access, which is not coastal dependent, in addition to impact to coastal recreation opportunity. Chapter 9 discusses the effects of alternatives on recreational access, which is not limited to coastal dependent recreation opportunities.

## RESPONSES TO ORGANIZATION COMMENTS

Comment letters from organizations and responses to those comment letters are included in this section.

### 3.1.5 Comment Letter O1. Audubon California and Morro Coast Audubon Society

#### Comment O1-1

While some adjustments have been made to the HCP for the Oceano Dunes District, we have several concerns regarding the reduction and elimination of exclosures, negative impacts of off-highway vehicle (OHV) use on listed species, and the proposed take limits not complying with the California Public Resources Code. Due to these reasons, the DEIR should reassess the impacts the proposed new activities have on Snowy Plovers and Least Terns.

Response to Comment O-1

The comment briefly summarizes concerns raised in comments O1-2 to O1-5 below. See responses to comments O1-2 to O1-5.

#### Comment O1-2

The DEIR Inadequately Assesses Adverse Impacts to Snowy Plovers and California Least Terns from Reduced Protections at 6 Exclosure and East Boneyard.

The HCP proposes to eliminate East Boneyard Exclosure and incrementally reduce the seasonal fencing along the 6 Exclosure, which would be a loss of 109 acres of Snowy Plover and Least Tern breeding habitat. We recognize that State Parks adjusted the 6 Exclosure reduction criteria around the breeding requirements, from 155 breeding pairs in the 2020 HCP to 180 breeding pairs in the 2025 HCP, to take into consideration breeding success. While it is promising to see an adaptive management approach, the criteria adjustment is still insufficient to protect and

conserve this threatened species. There are several other changes that can be implemented that ensure the protection of Snowy Plovers. The DEIR (section 9.2.3.3) describes the various impacts reducing or eliminating the 6 Exclosure can cause, such as exacerbating territorial aggression due to a reduction in protected shoreline habitat for foraging, reducing the amount of available habitat for nesting, and increasing the possibility of Snowy Plovers breeding in the open riding area.

The DEIR states that the majority of take at Oceano Dunes occurs after seasonal exclosure fencing is removed. The 6 Exclosure includes habitat along the shoreline, which also protects habitat and disturbance of wintering and foraging shorebirds.

Exclosures along the shoreline protect beach wrack, allowing it to accumulate and support biodiversity and coastal food webs. There is a strong and positive correlation with the abundance of stranded wrack and wintering shorebirds found on sandy beaches. Wrack is particularly important for Snowy Plovers, as they are visual surface feeders and feed on insects and invertebrates found in the wrack. Reducing and eliminating the 6 Exclosure will expose this section of the shoreline to OHV activities which can impact the accumulation of wrack on the beach and composition and density of the sand.

The 6 Exclosure should remain intact year-round to more adequately protect Snowy Plovers. This will also benefit Least Terns and shorebirds by protecting sandy beach and coastal dune habitat. These species rely on beaches and dunes and are sensitive to disturbances which can modify key behavioral traits that are crucial to their survival and reproduction.

These critical habitats at Oceano Dunes are being exposed to a high level of disturbance due to the recreational activity allowed on site. In addition to this stressor, beaches and coastal dunes are facing impacts from climate change, particularly sea-level rise and more intense and frequent storms. Sea-level rise will impact the upper zones of beaches first, which will contribute to the loss of habitat available for wrack accumulation and decrease invertebrate food resources. A case study of several beaches in California projected that a 0.5m increase in sea level rise would results in a 75% loss of upper beach zone where wrack accumulates, which would eliminate around 50% of intertidal biodiversity and vital ecosystem functions.

Despite the numerous threats Snowy Plovers, Least Terns, and shorebirds face throughout their ranges and the impacts their sensitive ecosystems are undergoing from human recreational use to sea-level rise, State Parks has not provided strong enough measures to protect threatened and endangered species. Exclosures should remain intact, limits should be implemented on OHV use both during the day and at night, and the protection of listed species should be prioritized over recreation.

Response to Comment O1-2

The commenter asserts that even with the adaptive management approach to reducing the 6 Exclosure and the increased species target criteria from 155 to 180 SNPL breeding pairs, the adjustment is insufficient to protect and conserve this threatened species. CDPR considered the additional studies referenced in the comment and determined that they do not provide any new substantial evidence to change the conclusions of the EIR on the impacts of eliminating the 6 Exclosure on nesting SNPL. The HCP evaluates the effects of CA-50 on SNPL and CLTE (HCP sections 4.3.1.5.11 and 4.4.1.5.11) and presents a comprehensive conservation program (HCP chapter 5), which includes 147 SNPL AMMs and 130 CLTE AMMs (see HCP Tables 5-2 and 5-3 and EIR Volume 3 Appendix B). Data collected over the past two decades documents

improved nest success, fledge success, and adult breeding populations within the Southern Exclosure. The EIR concludes that the impact on SNPL and CLTE is less than significant. No additional measures are required to offset the impact of increased SNPL or CLTE take or loss of protected nesting or foraging habitat. See Master Response 7: Reduction of Boneyard and 6 Exclosures (CA-50) for information on impacts to SNPL and CLTE.

The USFWS is the regulatory authority under FESA Section 7 to assess impacts to critical habitat from all proposed ITP covered activities identified in the HCP. The EA for the Oceano Dunes District HCP concludes the impacts on critical habitat from all ITP covered activities, which includes the project activities evaluated in this EIR, would not be significant. See Master Response 7: Reduction of Boneyard and 6 Exclosures (CA-50).

See Master Response 7: Reduction in 6 and Boneyard Exclosures regarding the rationale, criteria, and impacts on SNPL and CLTE of reducing the 6 and Boneyard Exclosures. Potential impacts on other wintering and foraging shorebirds are discussed in EIR Volume 1 section 6.3.2.10.

The seasonal exclosures were open to OHV recreation in the nonbreeding season until 2021, when CDPR administratively closed the North Oso Flaco shoreline temporarily in response to now-concluded permitting and litigation. CDPR plans to reopen the exclosures seasonally in 2026. See Master Response 6: CEQA Baseline and Scope for more information.

As noted in HCP section 2.2.2.1.2:

> Results from studies conducted by Dr. Jenny Dugan and Dr. Mark Page (Marine Science Institute at the University of California Santa Barbara) suggest the 7-month closure of breeding habitat during the breeding season is not a sufficient period of time for invertebrates, which are a food source for SNPL, to effectively recover species diversity and abundance along the Southern Exclosure shoreline following natural winter population declines along with the 5 months of recreational use. As a result, Oceano Dunes SVRA staff install wrack on the Southern Exclosure shoreline to increase the food resources available for SNPL chicks and juveniles during the breeding season.

This habitat enhancement would continue after the reduction of the 6 Exclosure.

The Year-Round Exclosure Alternative was rejected because the preferred alternative already meets conservation objectives and better achieves the objectives to balance conservation and recreation (see EIR Volume 1 section 9.2.3.3). See Master Response 14: Discussion of Alternatives for more information.

The potential effects of climate change and sea level rise on coastal habitat within the HCP area is addressed in the HCP as a changed circumstance (HCP section 6.5.1.8). See Master Response 11: Climate Change and Sea Level Rise for more information. The loss of habitat from sea level rise is not an effect caused by HCP covered activities, including proposed new activities addressed by the EIR.

The OHMVR Division is charged with administering the state's OHMVR Program to provide high quality OHV recreation opportunities and to provide for the conservation of natural and cultural resources. See Master Response 3: HCP with CDPR Mission and Mandates for information on accommodating recreation and conservation for more information. Also see Master Response 14: Discussion of Alternatives regarding the considered but rejected night closure alternative.

**Comment O1-3**

Allowed Incidental Take Should Not Exceed Historic Highs and Should Not Adversely Impact Snowy Plover and Least Tern Populations in the State Park.

The HCP proposes a new Snowy Plover Avoidance and Minimization Measure (AMM), allowing State Parks to capture up to 12 eggs/4 nests and/or 12 chicks/4 broods per year for covered activities not related to covered species management (i.e. motorized recreation). Due to the proposed reduction and elimination of the 6 Exclosure, State Parks has proposed to install temporary fencing if Snowy Plover nests or chicks are in the riding area. State Parks claims that these measures will reduce impacts to eggs and chicks in the riding areas but some eggs and chicks may still need to be captured to prevent mortality and injury. We have concern over the requested take of eggs and chicks due to the reduction and elimination of the 6 Exclosure. To protect Snowy Plovers from mortality and injury, the 6 Exclosure should remain intact.

Overall, we have concerns over the proposed incidental take numbers for Snowy Plovers and Least Terns. State Parks is proposing a take limit of 80 chicks every 5 years. This roughly amounts to 16 chicks per year. However, the highest level of mortality has been 2 chicks since 2002-2023 and the highest level of injured/rescued chicks has been 7. These levels should not greatly exceed historic take trends. A Habitat Conservation Plan should propose actions that improve the population of listed species, not provide opportunities for more take.

Response to Comment O1-3

Given that both covered activities and the conservation program described in the HCP are largely ongoing, incidental take estimates are based primarily on past take data, and allow for take associated with new covered activities, including egg and chick capture for captive rearing if determined to be threatened by covered activities (AMM 22 in CA-12b). The incidental take numbers presented in the HCP account for worst-case past observations of mortality and injury that have been observed only rarely during the timeframe from 2002 to 2023 and do not happen most years. See Master Response 2: HCP Proposed Levels of Permitted Take for more information and Master Response 1: HCP Purpose and ITP Issuance Requirements. Also see response to CDF comment A2-3 regarding capture and rearing of SNPL eggs and chicks.

**Comment O1-4**

The DEIR Inadequately Assesses Adverse Impacts to Snowy Plovers that will Occur from Opening 48 Acre Foredune Area.

Opening 48 Acre Foredune Area and the elimination of the 6 Exclosure will leave Snowy Plovers more vulnerable to vehicle strikes. The site is classified as primary habitat for Snowy Plovers and has been closed to the public year-round to establish vegetation as a dust control measure. Since the closure of the site and installation of fencing in 2020, Snowy Plovers have nested throughout the area.

The birds' path from the foredunes to the shoreline will traverse open riding areas, increasing the risk of injury and death. While the HCP states that as vegetation grows, the habitat will transition into secondary and tertiary habitat for Snowy Plovers, it is currently primary habitat for Snowy Plovers and should remain protected year-round. Given that circumstances have changed since the release of the 2020 HCP, the Recirculated DEIR should also evaluate the impacts the removal of the fencing will have on Snowy Plovers.

Response to Comment O1-4

The 48-acre foredune area has been planted with vegetation by the Dust Control Program. This area is permanently closed to OHV recreation and is not proposed for re-opening to OHV use. If SNPL are found nesting in the 48-acre foredune, the shoreline in front of the foredune would be closed to vehicle access to prevent vehicle strike. Once nesting season has ended and the birds are no longer present, vehicle access to the shoreline can resume. SNPL AMMs 1 through 46 and CLTE AMMs 1 through 37 address OHV recreation impacts on SNPL and CLTE.

The effects of eliminating the 6 Exclosure from the seasonal exclosure (CA-50) on SNPL is addressed in EIR Volume 1 section 6.3.2.1. The comment does not present any new substantial evidence changing the conclusions of the EIR on the impacts of eliminating the 6 Exclosure on nesting SNPL.

**Comment O1-5**

The Public Resources Code States that the Conservation of Natural and Cultural Resources are the Highest Priorities for State VRAs and Are Not Coequal Goals with Recreational Access.

The DEIR mischaracterizes California law by implying that conservation and recreational access in state vehicular areas (VRAs) share equal priority. California Public Resources Code section 5090.35, subdivision (a), states: "The protection of public safety … and the conservation of natural and cultural resources are of the highest priority in the management of the state vehicular recreation areas."

The DEIR purposes to "balance" the conservation of listed species with expanded recreational access that will result in high levels of take. Alternative 3: Permanent Year-Round Exclosure section 9.2.3.3 of the DEIR states:

> [t]his loss of shoreline access conflicts with project objectives to balance conservation and recreation demands, particularly to preserve, manage, and expand recreational opportunity and to manage, maintain, and maximize unique coastal camping and recreational amenities.

The "balance" provided in the DEIR seems at odds with the OHV's legislated purpose, which is "to provide high-quality OHV recreation opportunities in a manner that is safe, environmentally responsible, and sustainable." (DEIR, at § 2.2.1; see also, Pub. Resources Code, § 5090.02). The legislative findings and intent for Off-Highway Motor Vehicle Recreation should function as a condition on recreational use, not as a co-equal mandate overriding conservation requirements. A management approach that requires an incidental take permit to authorize mortality of Snowy Plovers and Least Terns raises substantial questions about whether such recreation remains sustainable within the meaning of the Act. Where recreation requires legal authorization to kill listed species in order to persist, it is reasonable to conclude that the use exceeds the bounds of environmentally responsible recreation.

To protect vulnerable species, habitats, and communities, a reduction and limit on OHV use in sensitive habitat is necessary. Reducing or eliminating exclosures exposes Snowy Plovers, Least Terns, and shorebirds to vehicle strikes, increased predation, disturbance in nesting, resting, and foraging, and depleting food source along the shoreline. The DEIR inappropriately represents conservation and OHV access as coequal goals which can lead to negative and irreversible damage to listed species, sensitive habitat, and impacted communities.

Response to Comment O1-5

CDPR endeavors to hold in balance the tension between multiple regulations governing resource protection, public access to coastal recreation, and the legislated designation of the park for motorized vehicle recreation. Project objectives (EIR Volume 1 section 2.3.2) the scope of these mandates. See Master Response 3: HCP with CDPR Mission and Mandates discussion on accommodating recreation and conservation. CDPR consideration of Alternative 3: Permanent Year-Round Exclosure Alternative (EIR Volume 1 section 9.2.3.3) recognizes that biological project objectives can be met without the impact of Alternative 3 on recreation project objectives. The proposed project would allow public use and enjoyment while conserving park resources and preserving, managing, and expanding motorized and non-motorized recreational access. See Master Response 1: HCP Purpose and ITP Issuance Requirements. Also see Master Response 14: Discussion of Alternatives regarding alternatives that reduce or limit OHV use and Master Response 7: Reduction of Boneyard and 6 Exclosures (CA-50) regarding the rationale, criteria, and impacts on SNPL and CLTE of reducing the 6 and Boneyard Exclosures.

**Comment O1-6**

**Conclusion**

For the reasons set forth above, we ask that our concerns be addressed before the DEIR is finalized and any Incidental Take Permits are issued. Audubon is confident that State Parks can meet the multiple user needs at Oceano Dunes without further endangered sensitive species.

Response to Comment O1-6

See responses to comments O1-2 to O1-5 above.

### 3.1.6 Comment Letter O2. California Four Wheel Drive Association (Cal4Wheel) and American Sand Association (ASA)

**Comment O2-1**

GENERAL COMMENTS

We recognize the positive health and social benefits that can be achieved through outdoor recreation. We also recognize that motorized recreation provides business owners and local communities with significant financial stimulus. Of great importance to the impetus for this comment letter: our members are directly affected by management decisions concerning public land use in CA State Parks managed public lands, including and especially, decisions that impact the scope of public access for outdoor recreation.

[…]

Cal4Wheel and ASA have reviewed the DEIR and believes that CA State Parks is legally and procedurally compelled to resolve issues in the following Plan components:

1. Public Resource Code and CA State Parks operational guidelines

2. DEIR assertion of legally indefensible alternatives

3. Discrimination of members of the public with disabilities

4. False assertion of government ownership of state- and federally-managed public lands

In summary reference to the items noted above, with additional detail for each following within this comment letter, we support any additional comments from individuals, groups, associations,

and the general public that encourage CA State Parks to uphold their mission and commitment to the public to manage public lands in California in a manner that maximizes public access and recreation alongside the mission to sustain the health, diversity, and ecological values of ODSVRA for the use and enjoyment of present and future generations. We strongly advocate against any components of the DEIR that would diminish or eliminate public access to ODSVRA now or in the future, and/or diminish the quality of the outdoor recreation experience for our Organizations' membership and the general public.

Response to Comment O2-1

The commenter's support for public access to the Oceano Dunes SVRA is noted. CDPR manages state park units as a State trustee agency for the benefit and inspiration of all state residents and visitors to state parks. CDPR operates Pismo State Beach and Oceano Dunes SVRA with a mission to provide protection of natural, cultural, and recreational values in perpetuity. This mission includes providing for the public use and enjoyment of those lands by preserving, managing, and expanding recreational opportunity consistent with park unit classifications (EIR Volume 1 section 2.3.2). See Master Response 3: HCP with CDPR Mission and Mandates for information on accommodating recreation and conservation.

Items 1-4 of the comment are addressed in response to the more detailed comments below concerning these items.

**Comment O2-2**

PUBLIC RESOURCE CODE AND CA STATE PARKS OPERATIONAL GUIDELINES

California State Parks operate under a set of mandates found in the California Public Resources Code (PRC). The PRC establishes that state parks are to be managed for public enjoyment, recreation, and preservation of natural and cultural resources. […]

We contest the scope of Alternatives 2, 3, and 4 of the DEIR given that the balance of purposes at ODSVRA are remarkably out of balance. It is essential that CA State Parks invest in restoration of OHV routes, open riding areas, and camping areas in order to achieve at minimum a 50-50% ratio of acreage that is distributed between designated recreation and conservation projects.

[…] It is important that implementation of the DEIR will not obstruct the membership of our Organizations, as well as members of the general public, from accessing ODSVRA for organized, safe, conservation-centric recreation by eliminating or restricting access to established in OHV routes and riding areas.

[…] It is important that the DEIR does not overstep PRC intent such that the best interests and needs of the public are being overrun through restriction or elimination of public access to CA State Parks managed lands through unnecessary, arbitrary, and capricious restriction of designated OHV routes and riding areas. This constitutes a violation of the rights and legal protections of the American people through unjustified application of Congressionally-directed public land management authority.

As remedy, we urge CA State Parks to explicitly state within the DEIR that existing designated OHV routes, riding areas, campgrounds, and other recreation infrastructure is of equal value to the natural resources that are itemized for protection in the DEIR. Additionally, we recommend that all existing recreational infrastructure be categorized as protected infrastructure, not to be restricted, minimized, closed to access, degraded in functional value, or destroyed as a result of

HCP and DEIR implementation. Furthermore, we assert the exigence that CA State Parks must invest in restoration of OHV routes, open riding areas, and camping areas in order to achieve at minimum a 50-50% ratio of acreage that is distributed between designated recreation and conservation projects.

Response to Comment O2-2

The commenter's citation of California PRC, support for additional OHV recreation access at the Oceano Dunes SVRA, and description of the context of OHV Recreation at the SVRA are noted. The OHMVR Division is charged with administering the state's OHMVR Program to provide high quality OHV recreation opportunities and to provide for the conservation of natural and cultural resources. See Master Response 3: HCP with CDPR Mission and Mandates for information on accommodating recreation and conservation.

CEQA Guidelines section 15126.6(f) states that an EIR shall describe a range of reasonable alternatives to a project or location of the project that would feasibly attain most of the basic project objectives but would avoid or substantially lessen any of the significant effects of the project. Alternatives 2, 3, and 4 were considered but were not selected as the proposed HCP better meets the project objectives of operating the covered park units in a manner that provides for public use and enjoyment while conserving park resources and preserving, managing, and expanding, as appropriate, motorized and non-motorized recreational access. See EIR Chapter 9. Alternatives and Master Response 14: Discussion of Alternatives for more information.

CDPR is a department within California's Natural Resources Agency. Land ownership and management of the HCP area are described in HCP section 1.3.

One of the project objectives is to "Preserve, manage, and expand, as appropriate, motorized and non-motorized recreational opportunities" (EIR Volume 1 section 2.3.2). Currently, 1,138 acres of the 5,005 HCP area are open to OHV recreation (HCP section 2.2.1). Most of the HCP area (4,130 acres) is open to non-motorized recreation and is not restricted only to conservation projects. In addition, the proposed project includes CA-50, which would expand OHV recreation access by up to 109 acres by incrementally reducing the Boneyard and 6 Exclosures (HCP section 2.2.5.11 and EIR Volume 1 section 2.4.2.2). The HCP balances the FESA requirement to minimize and mitigate take of listed species to the maximum extent practicable [section 10(a)(2)(B)(ii)] while operating a SVRA and maximizing recreation opportunity.

**Comment O2-3**

DEIR ASSERTION OF LEGALLY INDEFENSIBLE ALTERNATIVES

As noted, our Organizations are nonprofits representing tens of thousands of OHV users, families, clubs, and partner organizations who lawfully recreate at Oceano Dunes State Vehicular Recreation Area (ODSVRA). Our members include long-time visitors who rely on OHV access and beach camping to experience coastal resources that are otherwise inaccessible due to mobility limitations, geography, or economic constraints.

Cal4Wheel and ASA support Alternative 1 because it is the only alternative analyzed that is capable of expanding OHV and camping access, through CA-50–type actions that reduce unnecessary exclosures and restore year-round recreation opportunity. However, our Organizations' support is conditional. Alternative 1 must be modified with enforceable legal and managerial sideboards to ensure that access expansion is real, durable, and not later undermined through mitigation-by-closure, speculative air-quality claims, or adaptive management drift.

Legislative and Legal Context: ODSVRA Is a Recreation-First Unit

Oceano Dunes is not a generic coastal preserve. It is a legislatively designated State Vehicular Recreation Area, established specifically to provide OHV recreation and camping while managing natural resources (Cal. Pub. Res. Code §5090.24). Any alternative that structurally reduces recreation opportunity must therefore meet a high legal threshold, demonstrate necessity, and show that less restrictive means are infeasible.

CEQA does not authorize agencies to redefine a unit's statutory purpose through environmental review. Nor does the Endangered Species Act (ESA) require the elimination of lawful public use where impacts can be avoided, minimized, and mitigated through management. Courts have consistently rejected "zero use" assumptions where balanced management is feasible (*Friends of Endangered Species v. Jantzen, 760 F.2d 976; Spirit of the Sage Council v. Norton, 294 F. Supp. 2d 67*).

Alternative 1 Is the Only Expansion-Capable Alternative

As acknowledged in the RDEIR, CA-50–type actions, including reducing or reconfiguring the East Boneyard and the "6 Exclosures," are the only project components that convert seasonal or restricted areas into expanded year-round OHV and camping opportunity. No other alternative includes a comparable access-expansion mechanism. Accordingly:

- Alternative 1: Preserves and expands recreation access
- Alternative 2: Preserves access at best, but does not expand it
- Alternative 3: Reduces access through permanent year-round exclosures
- Alternative 4: Reduces access through vehicle and camping caps

If the agencies intend to meet the stated objective of balancing species conservation with continued and improved public access, Alternative 1 is the only option that satisfies that purpose.

Response to Comment O2-3

Alternative 1 of the EIR is the No Project Alternative, but it appears that the commenter meant to refer to the proposed project (proposed HCP). Under the No Project Alternative, the USFWS would not issue an ITP for Oceano Dunes District parklands and changes proposed by CDPR, including CA-50, would not take place (EIR Volume 1 section 9.2.1.1). The proposed project was selected because it better meets the project objectives of operating the covered park units in a manner that provides for public use and enjoyment while conserving park resources and preserving, managing, and expanding, as appropriate, motorized and non-motorized recreational access. See EIR Volume 1 Chapter 9. Alternatives and Master Response 146: Discussion of Alternatives for more information.

Future reductions in OHV recreation access are not planned but may be needed temporarily, in response to legal requirements, and/or to meet the HCP's biological goals and objectives. Restricting OHV recreation in the HCP area as mitigation is not proposed, except for temporary bumpouts or single-nest exclosures to protect SNPL and CLTE nesting near or within the open riding area on an as-needed basis (HCP section 2.2.2.1.1). CDPR may implement future dust control activities (CA-44) as needed to implement the Dust Control Program such as installing track-out control at Pier Avenue, new backdune planting areas, and preservation of foredune vegetation in the Southern Exclosure. Such measures may be needed to comply with the Stipulated Order of Abatement (SOA) approved by the SLOAPCD Hearing Board in April 2018 (Case No. 17-01) and amended in November 2019, October 2022, and October 2024 (see HCP

section 2.2.5.5). Also see Master Response 8: Dust Control Program (CA-44). Although the HCP's conservation program is expected to effectively achieve the HCP's biological goals and objectives, adaptive management would be utilized to provide management flexibility to best afford protection for the covered species; see HCP section 5.5 for more information.

CDPR does not propose to redefine the HCP area's statutory purpose through environmental review or eliminate lawful public use of the HCP area. See EIR Chapter 2 Project Description and HCP Chapter 2 Project Description/Covered Activities. Also see Master Response 3: HCP with CDPR Mission and Mandates for information on accommodating recreation and conservation.

**Comment O2-4**

Alternative 1 Must Be Modified with Enforceable Sideboards

Our Organizations' support for Alternative 1 is contingent on the adoption of the following mandatory implementation protections, which must be incorporated into the Final EIR, Final HCP, and operational protocols.

1. No Net Loss of Recreation Access (Acreage + Camping Capacity)

The Final HCP must establish and track a recreation baseline, including:

- OHV-open acreage (seasonal vs. year-round);
- beach driving corridor availability;
- camping vehicle capacity and seasonal limits.

Annual reporting must disclose any reduction, duration, and cause, with a clear requirement that CA-50 access expansion results in a net gain in recreation opportunity over baseline conditions.

2. Prohibition on Mitigation-by-Closure

The DEIR repeatedly suggests that air-quality or biological concerns could be addressed through operational restrictions. This creates a clear risk that closures become the default mitigation tool, even where less restrictive measures are available. The Final HCP must explicitly state:

"*Recreation access reductions shall not be presumed to be the preferred or default mitigation measure. Non-access-reducing measures must be exhausted first."*

3. Mandatory Reopening Triggers and Time Limits

Any temporary restriction must include:

- written findings tied to site-specific data;
- a defined geographic scope;
- a maximum duration; and
- objective reopening criteria.

Absent these safeguards, "temporary" restrictions inevitably become permanent through administrative inertia.

4. Lock CA-50 Into Measurable Performance Commitments

If CA-50 is the justification for selecting Alternative 1, then the Final HCP must require:

- a schedule for implementation;
- acreage targets; and

- public reporting demonstrating actual conversion of restricted areas to open recreation use

5. ESA Compliance Must Not Become a Backdoor to SVRA Closure

The Draft HCP correctly recognizes that ESA compliance is achieved through avoidance, minimization, mitigation, monitoring, and adaptive management - not elimination of use. The Final HCP must clarify that:

- seasonal fencing, predator management, education, and enforcement are preferred tools
- recreation access restrictions require affirmative scientific justification tied to exceedance of authorized take.

Response to Comment O2-4

The comment expresses opinion on the project. No specific comment is presented on the content of the HCP or analysis in the EIR.

CDPR acknowledges that recreation can co-exist with covered species conservation in the HCP area. See Master Response 1: HCP Purpose and Requirements for a discussion of species recovery in the HCP area, and Master Response 3: HCP with CDPR Mission and Mandates for information on accommodating recreation and conservation.

CDPR does not propose any new projects that would adversely impact access to coastal recreation. All new proposed or potential future projects subject to CDPR approval would benefit recreation access by developing new or improving existing facilities (i.e., reduction in seasonal exclosures [CA-50], limited trail riding [CA-42]), see HCP sections 2.2.5.3 and 2.2.5.11 and EIR Volume 1 sections 2.4.2.2 and 2.4.2.3 for more information. CA-50 and CA-42 (if implemented) are expected to result in a net gain in OHV recreation access compared to existing conditions.

CDPR has a mandate to balance the need to protect California's natural resources, while providing recreational access to the parks, see Master Response 3: HCP with CDPR Mission and Mandates for more information. Park operations at Pismo State Beach and Oceano Dunes SVRA are subject to multiple regulatory programs and approved plans enacted for the purpose of resource protection and it is not feasible to guarantee no net loss of recreation access.

HCP section 2.2.1 describes existing OHV recreation access in the HCP area (recreation baseline), including OHV-open acreage (seasonal vs. year-round); beach driving corridor availability; and camping vehicle capacity and seasonal limits. CDPR does not propose any new projects that would adversely impact access to coastal recreation. All new proposed or potential future projects subject to CDPR approval would benefit recreation access by developing new or improving existing facilities (i.e., reduction in seasonal exclosures [CA-50], limited trail riding [CA-42]), see HCP sections 2.2.5.3 and 2.2.5.11 and EIR Volume 1 sections 2.4.2.2 and 2.4.2.3 for more information. By making additional acreage available for OHV recreation, CA-50 (proposed) and CA-42 (potential future) would benefit OHV recreation access compared to existing conditions.

**Comment O2-5**

PM10 Claims Lack Empirical Correlation with OHV Recreation and Do Not Support Access Reducing Alternatives

The Recirculated DEIR repeatedly references PM10 concerns and the San Luis Obispo Air Pollution Control District's (SLOAPCD) Stipulated Order of Abatement (SOA) as a basis for

restricting OHV recreation and camping access at Oceano Dunes SVRA (RDEIR §1.3; §4.2 Air Quality; §4.3 Biological Resources; Chapter 5 Alternatives). However, neither the RDEIR nor the Draft HCP establishes a scientifically defensible causal relationship between OHV recreation and PM10 exceedances, and the administrative record instead supports the opposite conclusion: wind-driven natural processes dominate PM10 emissions in the Oceano Dunes system.

A. Dominant Role of Wind-Driven Sand Transport

Peer-reviewed research consistently finds that aeolian entrainment of emissive sand during highwind events is the primary driver of PM10 in coastal dune environments, independent of vehicular activity. Gillies et al. (2005) and Washington et al. (2003) demonstrate that PM10 emissions increase exponentially with wind speed once threshold friction velocities are exceeded, a condition common at Oceano Dunes due to regional meteorology and dune morphology. These findings are directly relevant to the DEIR's air-quality analysis, which acknowledges that PM10 exceedances frequently coincide with strong onshore wind events (RDEIR §4.2).

Importantly, these exceedances occur regardless of OHV activity levels, including periods when vehicle access is restricted or absent. This directly undermines the implicit assumption… which is repeated throughout the DEIR alternatives discussion… that reductions in OHV use will produce commensurate reductions in PM10 concentrations.

B. Scripps Institution of Oceanography Findings and the Administrative Record

The Scripps Institution of Oceanography Interim Year 3 Report, commissioned by California State Parks, provides site-specific confirmation of the broader scientific literature. The Scripps report concludes that regional wind fields, dune surface conditions, and natural sand transport processes are the dominant contributors to PM10 at Oceano Dunes, and that the relationship between human activity and measured PM10 concentrations is weak, variable, and often statistically insignificant (Scripps Institution of Oceanography, 2023).

Critically, the Scripps report documents that:

- Peak PM10 concentrations are strongly associated with meteorological conditions, not with recreational intensity;
- Emissive source areas extend well beyond OHV riding corridors; and
- Changes in OHV access do not consistently translate into measurable reductions in downwind PM10 concentrations.

These findings are directly relevant to the DEIR's reliance on the SOA as justification for access-reducing alternatives (DEIR §1.3; Chapter 5). Yet the DEIR does not reconcile its proposed recreation restrictions with the Scripps findings, nor does it explain why measures shown to have little effect on PM10 concentrations are nonetheless treated as necessary or effective mitigation. This omission renders the RDEIR's air-quality rationale for Alternatives 3 and 4 analytically deficient under CEQA.

C. Ineffectiveness of Vehicle Restrictions as PM10 Mitigation

Agency and consultant analyses further confirm that vehicle restrictions have not produced consistent or measurable PM10 reductions attributable to human activity. Countess Environmental (2019), evaluating monitoring data associated with the SOA, found no reliable correlation between OHV use levels and PM10 exceedances once wind conditions were accounted for. The Draft HCP similarly acknowledges that PM10 management relies on a suite

of measures - vegetation, surface stabilization, and monitoring - rather than recreation controls alone (Draft HCP Chapter 2; Appendix B).

Despite this, the DEIR alternatives analysis repeatedly treats access reduction as a primary response to PM10 concerns (DEIR Chapter 5), without demonstrating effectiveness or necessity. CEQA requires more than speculative benefit; it requires substantial evidence that a mitigation measure will actually reduce the impact it purports to address (CEQA Guidelines §§15064, 15126.4). That showing has not been made here.

D. Legal Implications: PM10 Cannot Justify Permanent or Expanding Closures

Absent an empirical causal link, PM10 compliance cannot lawfully justify permanent or expanding recreation closures, particularly within a legislatively designated State Vehicular Recreation Area. Courts have rejected mitigation rationales based on unsupported assumptions or tenuous correlations (Communities for a Better Environment v. SCAQMD, 48 Cal. 4th 310). Where an agency relies on air quality impacts to restrict public use, it must demonstrate that the restriction will actually reduce the impact… this standard has not met by the DEIR's treatment of PM10.

Moreover, the ESA and the Draft HCP do not require elimination of recreation to address air quality. The HCP's conservation strategy is grounded in avoidance, minimization, mitigation, and adaptive management, not exclusion (Draft HCP Chapter 1; Chapter 6). Using PM10 concerns as a backdoor justification for access reduction therefore exceeds the scope of both ESA compliance and the HCP's stated objectives.

E. Connection to Species Conservation Success and Balanced Management

The lack of correlation between OHV recreation and PM10 emissions reinforces the broader conclusion, which is documented throughout the HCP and DEIR, that balanced management works at Oceano Dunes. Just as species conservation success (e.g., western snowy plover recovery) has been achieved through targeted, science-based measures rather than wholesale exclusion (Draft HCP Chapter 3; RDEIR §4.3), air-quality management must likewise focus on measures that address actual drivers of emissions, not symbolic restrictions on recreation.

In both contexts, the administrative record demonstrates that structural closures and access caps are blunt instruments unsupported by empirical evidence. The RDEIR and HCP instead support an approach that retains OHV and camping access while applying focused management tools aligned with best available science. Alternatives predicated on PM10-driven recreation reduction therefore lack both scientific and legal foundation.

Response to Comment O2-5

The comment expresses concerns over the association between OHV activity within the Oceano Dunes SVRA and exceedances of $PM_{10}$ standards at SLOAPCD monitoring sites downwind of the Oceano Dunes SVRA. The effect of OHV activity on PM emissions from the ODSVRA and exceedances of $PM_{10}$ standards at nearby SLOAPCD monitoring sites has been well documented and discussed in ARWPs, SAG studies, and SLOAPCD reports. As described in EIR Volume 1section 5.2.3, the SAG prepared its "Oceano Dunes: State of the Science" report that explains that the mechanical action of vehicle tires on the dune surface can increase the dust emissivity and inhibit the growth of new vegetation. Although there has been no direct measurement of the change in surface emissivity associated with the transition from seasonal to year-round OHV recreation, it is assumed that increasing the amount of OHV recreation in the Boneyard

Exclosure and 6 Exclosure would likely increase surface emissivity in these areas, as stated in section 5.3.2.

Therefore, Alternative 2: Reduced Disturbance in Dust Emissions Areas was included in the EIR to avoid proposed actions with the potential to increase particulate emissions from the HCP area that may contribute to excess dust emissions in potential violation of state or federal air quality standards (EIR Volume 1 section 9.2.2). Nevertheless, Alternative 3 was not selected because the proposed HCP better meets project objectives of operating the covered park units in a manner that provides for public use and enjoyment while conserving park resources and preserving, managing, and expanding motorized and non-motorized recreational access.

As described in EIR Volume 1 section 5.2.4, the dust control measures installed in the Oceano Dunes SVRA, which are described in more detail in the ARWP documents, are designed to address PM emissions under the excess emissions framework as per the requirements of the SOA as amended. The mitigation measure AIR-1 (EIR Volume 1 section 5.5) states that any violations of air quality standards or changes in dune surface emissivity associated with implementation of the HCP would be adequately addressed and accounted for in the ARWP process to achieve and maintain compliance with the requirements of the SOA. The HCP includes dust control activities as a covered activity (CA-44), but dust control activities are not proposed or under review as part of the HCP. Comments directed at modifying dust control measures identified in the HCP are comments on the Dust Control Program characteristics and not considered a comment on the EIR environmental analysis. See Master Response 8: Dust Control Program (CA-44) for more information.

**Comment O2-6**

Alternatives 3 and 4 Are Overbearing and Legally Non-Compliant

Alternative 3 imposes permanent, year-round closures that:

- exceed what is necessary for species protection;
- conflict with the SVRA's statutory purpose; and
- rely on precaution rather than evidence.

Permanent exclosures are not required by the ESA where seasonal and targeted measures are effective, as demonstrated by decades of snowy plover recovery at ODSVRA.

Alternative 4 imposes reduced vehicle and camping limits, and thus functions as a de facto rationing scheme that restricts who may access public land rather than managing impacts. Such caps:

- disproportionately harm families, low-income users, and people with disabilities;
- shift impacts to surrounding communities; and
- lack a demonstrated nexus to biological necessity.

Neither alternative satisfies CEQA's requirement to adopt the least environmentally damaging feasible alternative that still meets project objectives.

Alternative 2 is Merely an Access-Preservation Fallback - and Still Deficient

Cal4Wheel and ASA recognize Alternative 2 as a potential fallback if the agencies refuse to adopt Alternative 1. However:

- Alternative 2 does not expand access as written.
- It still relies on overly conservative disturbance assumptions.

- It lacks enforceable protections against incremental access loss.

Alternative 2 is not a legally defensible option for adoption. Comprehensive revisions are required, that include (to start, but not limited to) upgrades with the same sideboards described above for Alternative 1. Without them, Alternative 2 also results in overbearing and legally unsupported recreation restrictions.

Response to Comment O2-6

The purpose of Alternative 3: Permanent Year-Round Exclosures is to provide wintering shorebird protection (including SNPL). The purpose of Alternative 4: Reduced Vehicle Use Limits is to reduce environmental effects associated with motorized recreation. The purpose of Alternative 2: Reduced Disturbance in Dust Emissions Areas is to avoid proposed actions with the potential to increase particulate emissions from the HCP area that would contribute to excess dust emissions in potential violation of state or federal air quality standards. These alternatives were not selected because the proposed HCP better meets project objectives of operating the covered park units in a manner that provides for public use and enjoyment while conserving park resources and preserving, managing, and expanding motorized and non-motorized recreational access. See EIR Volume 1 section 9.2 and Master Response 14: Discussion of Alternatives for more information.

**Comment O2-7**

Species Conservation Success at Oceano Dunes Demonstrates Balanced Management Works

*(Substantial Evidence Supporting Alternative 1 and Rejecting Closure-Based Alternatives)*

The biological record summarized in the Draft HCP and the Recirculated DEIR demonstrates that species conservation success at Oceano Dunes SVRA has occurred under a management regime that retained OHV recreation and camping, rather than one based on wholesale exclusion. This record provides substantial evidence that balanced, targeted management… not permanent closures or access caps… is both effective and legally sufficient to meet conservation obligations.

A. Western Snowy Plover (SNPL)

The western snowy plover provides the most directly relevant and well-documented case study. The Draft HCP acknowledges that snowy plover nesting success and fledgling production at Oceano Dunes have improved over time through seasonal protections, symbolic fencing, predator management, monitoring, and public compliance, while OHV recreation continued within designated areas (Draft HCP, Chapter 3 –Covered Species; Appendix C – Biological Data and Monitoring Results).

The RDEIR similarly recognizes that plover management at ODSVRA relies on temporal and spatial avoidance measures, not permanent exclusion, and that these measures have been implemented concurrently with recreational use (RDEIR, Section 4.3 Biological Resources; RDEIR Appendix BIO).

Peer-reviewed literature cited in the Draft HCP supports these conclusions. Page et al. (2009) and Lafferty et al. (2006) demonstrate that plover reproductive success is primarily driven by predation pressure, habitat conditions, and management effectiveness, not by the mere presence of recreation. The Draft HCP's reliance on these management tools is therefore consistent with the best available science and is already producing measurable conservation benefits at Oceano Dunes.

Importantly, nothing in the Draft HCP or RDEIR establishes that expanded, carefully managed OHV access - such as that contemplated under CA-50 in Alternative 1 - would undermine these conservation outcomes, provided seasonal and site-specific protections remain in place (RDEIR, Chapter 3 Project Description; Chapter 5 Alternatives).

B. California Least Tern (CLTE)

For the California least tern, the Draft HCP explains that nesting success is driven by predator management, habitat quality, and seasonal buffering, rather than generalized public access restrictions (Draft HCP, Chapter 3; Appendix C). The RDEIR similarly identifies targeted management measures as the primary mitigation approach for tern impacts, not permanent area closures (RDEIR, Section 4.3).

This approach is consistent with statewide monitoring and recovery literature, which shows least tern colonies persisting and expanding in areas with adjacent recreation where disturbance is managed during the nesting season (Marschalek, 2014; USFWS, 2020). Neither the Draft HCP nor the RDEIR presents evidence that year-round closures or vehicle caps are biologically necessary for tern conservation at Oceano Dunes.

C. Tidewater Goby (TG)

For tidewater goby, the Draft HCP and Appendices emphasize that hydrology, lagoon connectivity, and water quality are the dominant factors influencing population persistence (Draft HCP, Chapter 3; Appendix D – Aquatic Resources). The RDEIR likewise frames impacts and mitigation in terms of habitat condition and aquatic system management, rather than recreational use intensity (RDEIR, Section 4.3).

Swift et al. (2011), cited in the HCP appendices, conclude that goby populations are not limited by adjacent upland recreation where estuarine processes are intact. The administrative record therefore does not support claims that OHV recreation or camping reductions are necessary to protect this species.

D. California Red-Legged Frog (CRLF)

The Draft HCP relies on the U.S. Fish and Wildlife Service’s Recovery Plan for the California red-legged frog, which identifies habitat availability, hydrologic stability, and invasive species management as primary

recovery drivers (Draft HCP, Chapter 3; Appendix C; USFWS, 2002). The RDEIR similarly evaluates CRLF impacts through a habitat-based lens and does not identify OHV recreation as a primary stressor requiring elimination (RDEIR, Section 4.3).

This reinforces that site-specific protections and monitoring, not broad access restrictions, are the appropriate conservation tools.

E. Southwestern Pond Turtle (SWPT) and Western Spadefoot (WSF)

For southwestern pond turtle and western spadefoot, the Draft HCP and Appendices emphasize localized habitat features, breeding sites, and environmental conditions as the key conservation variables (Draft HCP, Chapter 3; Appendix C). Bury and Germano (2008) and Morey (2005), both relied upon in the HCP’s literature base, document successful coexistence with managed human use where nesting, basking, and breeding areas are protected through targeted measures.

Again, neither the Draft HCP nor the RDEIR presents substantial evidence that permanent closures or access caps are biologically required for the SWPT and WSF species at Oceano Dunes.

Response to Comment O2-7

CDPR acknowledges that recreation can co-exist with covered species conservation in the HCP area. See Master Response 1: HCP Purpose and Requirements for a discussion of species recovery in the HCP area. OHV recreation is part of the environmental baseline and is not a proposed new activity analyzed in the EIR, see Master Response 6: CEQA Baseline and Scope for more information. See EIR Volume 3 Appendix D and HCP Chapter 4 for a discussion of the potential impacts of OHV recreation on covered species.

Although permanent year-round exclosures (Alternative 3) and reduced vehicle use limits (Alternative 4) were considered in the EIR as part of the alternatives analysis (EIR Volume 1 Chapter 9), neither year-round closures nor reduced vehicle use limits are proposed as part of the project. As stated in response to comment O2-4 above, CDPR does not propose any new projects that would adversely impact access to coastal recreation. All new proposed or potential future projects subject to CDPR approval would benefit recreation access by developing new or improving existing facilities (i.e., reduction in seasonal exclosures [CA-50], limited trail riding [CA-42]), see HCP sections 2.2.5.3 and 2.2.5.11 and EIR Volume 1 sections 2.4.2.2 and 2.4.2.3 for more information. CA-50 and CA-42 (if implemented) are expected to result in a net gain in OHV recreation access compared to existing conditions.

**Comment O2-8**

Legal and Policy Implications for Alternatives Analysis

Taken together, the Draft HCP and Recirculated DEIR establish a clear factual predicate: species conservation success at Oceano Dunes has been achieved through adaptive, targeted management in a recreation-inclusive landscape. This record undermines the premise of Alternatives 3 and 4, which rely on permanent exclosures and vehicle limits that exceed what is necessary to avoid, minimize, or mitigate impacts.

Under CEQA, alternatives that impose greater restrictions than required to meet project objectives -particularly where less restrictive, feasible measures have proven effective - are legally deficient (CEQA Guidelines §15126.6). Likewise, the ESA does not require elimination of lawful public use where take can be managed through an HCP (16 U.S.C. §1539; Friends of Endangered Species v. Jantzen, 760 F.2d 976).

Accordingly, the administrative record supports Alternative 1… modified to include enforceable implementation sideboards… as the only alternative that both advances conservation and fulfills the statutory purpose of ODSVRA, while demonstrating that balanced management is not only feasible, but already successful.

Alternatives Summary

Alternative 1 is the only legally defensible alternative, and the only alternative capable of protecting and expanding OHV and camping access at Oceano Dunes SVRA. However, that outcome is not automatic. Without enforceable sideboards, Alternative 1 risks devolving into another pathway for access erosion.

Cal4Wheel and ASA therefore urge the agencies to:

1. Select Alternative 1;

2. Modify it to include enforceable no-net-loss, no-mitigation-by-closure, and reopening trigger requirements; and

3. Reject Alternatives 3 and 4 as inconsistent with law, science, and the SVRA's legislative mandate.

Balanced management is not only legally required… it has already been proven to work at Oceano Dunes. The Final EIR and HCP must reflect that reality.

Response to Comment O2-8

See response to comment O2-6 above regarding Alternatives 3 and 4. See response to comment O2-4 above regarding modifications to the proposed project (called Alternative 1 by the commenter). See Master Response 1: HCP Purpose and Requirements and Master Response 3: HCP with CDPR Mission and Mandates for information on accommodating recreation and conservation. CDPR does not propose to eliminate lawful public use of the HCP area. CDPR does not propose any new projects that would adversely impact access to coastal recreation (see response to comment O2-4 for more information).

**Comment O2-9**

FALSE ASSERTION OF GOVERNMENT OWNERSHIP OF STATE- AND FEDERALLY-MANAGED PUBLIC LANDS

As noted above, State Park lands in California are public lands, meaning they are owned by the citizens of the state as a collective. The California Department of Parks and Recreation (California State Parks) is the managing authority, but it does not "own" the land in a private sense. Rather, the department manages these lands on behalf of the public, ensuring they are protected, conserved, and available for public use under the framework of state law.

The California Public Resources Code (Sections 5001–5077) defines the roles and responsibilities of the State Parks Department, emphasizing its duty to manage the parks for public benefit, preservation, and enjoyment. This aligns with the concept that state parks are public assets held in trust for current and future generations.

Additionally, state parks in California are classified under the broader concept of public trust lands, which means they are managed in the public interest, reflecting shared ownership by all citizens. In essence, the land belongs to the people of California, with the State Parks Department acting as the steward responsible for its preservation and management.

Thus, we are alarmed and disappointed that the DEIR, HCP and related Appendices are riddled with statements asserting that the CA State Parks "owns" lands contained within the Oceano Dunes District and ODSVRA, which is all in fact, CA State Parks managed public land. In order to protect the vested rights and ownership that American citizens possess through the endowment of our treasured public lands, and to ensure accurate language that aligns with PRC and the US Constitution, each of these false statements within the DEIR, HCP, and Appendices must be corrected. Erroneous references to state or federal ownership of public lands are found in the following:

- Recirculated DEIR, Chapter 2, Project Description, page 2-1:
  - *"The HCP area lands are owned by CDPR..."*
  - This must be corrected to state "…The HCP area lands are managed by CDPR…"

- Recirculated DEIR, Chapter 2, Project Description, 2.2 Background of Park Operations, 2.2.1
- Mission of California State Parks, paragraph 4, page 2-4:
  "The mission of the OHMVR Division is to provide leadership statewide in the area of
  - *OHV recreation; to acquire, develop, and operate state-owned vehicular recreation areas*…"
  - This must be corrected to state "…state-managed vehicular recreation areas
- Recirculated DEIR, Chapter 4, Land Use Plans and Policies, 4.1 Regulatory Setting, paragraph 1, page 4-1:
  - "*The proposed new activities would be conducted on state-owned and state-operated land that, with the exception of coastal development permitting typically conducted through local agencies, is not subject to local land use restrictions and zoning regulations."*
  - This must be corrected to state… "…conducted on state-managed public land that…
- Revised Habitat Conservation Plan, Executive Summary, Geographic Scope, paragraph 3, page x:
  - "*The HCP area lands are owned by CDPR…"*
  - This must be corrected to state: "The HCP area lands are public lands that are managed by CDPR…"
- Revised Habitat Conservation Plan, Chapter 3, Environmental Setting / Biological Resources, 3.3.1.3.1 Critical Habitat, paragraph 2, page 3-19:
  - "…*Guadalupe-Nipomo Dunes National Wildlife Refuge, which is owned and managed by USFWS*…"
  - This must be corrected to state: "…Guadalupe-Nipomo Dunes National Wildlife Refuge, an area of public land that is managed by USFWS…"

Please note, there may be additional erroneous references to state or federal ownership of public lands in other components of the DEIR, HCP, Appendices, and supporting documents. The items in need of correction as noted above are not intended to be a comprehensive list of all such references. As additional erroneous references may be found, they must also be corrected.

Again, it is critical for CA State Parks to bear in mind that state and federal agencies do not own our public lands. State and federally managed lands are a part of the public endowment, as all public lands are owned by the citizens of the USA (the public); CA State Parks, the Forest Service, the BLM, the Fish & Wildlife Service, and all other state and federal agencies are merely contracted to manage those lands within the defined scope of limited authority that is granted by PRC, the US Congress, and the US Constitution. Thus, we assert the exigence that CA State Parks correct each item of erroneous language that states implicitly or explicitly that any state or federal agency owns our public lands.

Response to Comment O2-9

Comment noted. This is not a comment on the substance of the EIR impact analysis or merits of the HCP. No changes to the EIR or HCP are required. Also, the OHMVR Division mission statement presented in the EIR project description is the official statement used by California State Parks. It is beyond the purview of this EIR to modify this statement language.

Land ownership and management of the HCP area are described in HCP section 1.3.

**Comment O2-10**

CLOSING

We would like to close by once again calling your attention to the vested interest that Cal4Wheel, ASA, other members of the outdoor recreation sector, local governments, and the general public have as vested stakeholders of CA State Parks Oceano Dunes District and ODSVRA. We encourage CA State Parks to uphold their alignment with PRC, the CA State Parks mission and operating guidelines, and CA State Parks responsibility to manage our public lands within the scope of Constitutionally-granted boundaries as contracted managers of our nation's public lands - the citizenry's prized national heritage.

California Four Wheel Drive Association and American Sand Association would like to be considered interested publics for the Recirculated DEIR and HCP.

Response to Comment O2-10

Comment noted. See response to comments O2-1 through O2-9 above. The commenter is included on the distribution list for information pertaining to the HCP and EIR.

### 3.1.7 Comment Letter O3. California Off-Road Vehicle Association

**Comment O3-1**

Oceano Dunes SVRA is far more than a recreational site. It is a cornerstone of California's multiple use public-lands framework and one of the last remaining coastal locations where lawful, family oriented motorized recreation is permitted. The Legislature's designation of this area as a State Vehicular Recreation Area reflects a clear intent that recreation and resource protection coexist through active management—not exclusion.

Oceano Dunes lies within the Guadalupe–Nipomo Dunes complex, one of the largest intact coastal dune systems in California. For generations, this landscape has supported both public recreation and sensitive coastal species, including the snowy plover. These uses are not mutually exclusive. They have coexisted for decades through intentional, on-the-ground management guided by monitoring, data, and adaptive decision-making.

California State Parks and the Off-Highway Motor Vehicle Recreation (OHMVR) Division have invested millions of public dollars generated by the gas tax at Oceano Dunes in species monitoring, seasonal and permanent fencing, predator management, public education, enforcement, habitat restoration, and dust mitigation. This level of active management is comparable to—and in many cases exceeds—that employed at nonmotorized coastal State Beaches that also support snowy plover habitat. The presence of off-highway vehicles alone is not determinative of species outcomes.

Snowy plovers face a range of pressures common to all California coastal beaches, including human presence, predators, storm events, shifting habitat conditions, and broader environmental dynamics. Successful protection depends on adaptive, science-based management that addresses these factors comprehensively. Blanket closures that eliminate one form of recreation without addressing the full spectrum of stressors do not constitute sound conservation strategy.

Despite extensive mitigation efforts, Oceano Dunes has faced sustained closure pressure driven largely by litigation strategies that seek to eliminate motorized recreation rather than improve measurable biological outcomes. This approach has prolonged conflict, diverted resources away from on-the-ground solutions, and undermined confidence in balanced land management.

The recent court ruling underscores the need for a durable, lawful, and scientifically defensible path forward. CORVA views the Incidental Take Permit (ITP) and Habitat Conservation Plan (HCP) process as a critical opportunity to establish regulatory certainty, align management actions with clear and measurable biological objectives, and ensure continued public access while listed species are protected and recovered.

CORVA respectfully urges California State Parks and the OHMVR Division to continue advancing solutions grounded in data, adaptive management, and transparent performance metrics. We ask the Department to evaluate Oceano Dunes within the broader context of coastal plover management statewide and to recognize that active management—not closure—offers the greatest opportunity for long-term success for both species conservation and public recreation.

California's public lands were not set aside for exclusion, but for thoughtful, balanced use. Oceano Dunes can and must remain a place where environmental protection and responsible motorized recreation coexist under a science-based management framework.

Response to Comment O3-1

CDPR acknowledges that recreation can co-exist with covered species conservation in the HCP area. See Master Response 1: HCP Purpose and Requirements for a discussion of species recovery in the HCP area, and Master Response 3: HCP with CDPR Mission and Mandates for information on accommodating recreation and conservation.

CDPR does not propose any new projects that would adversely impact access to coastal recreation. All new proposed or potential future projects subject to CDPR approval would benefit recreation access by developing new or improving existing facilities (i.e., reduction in seasonal exclosures [CA-50], limited trail riding [CA-42]), see HCP sections 2.2.5.3 and 2.2.5.11 and EIR Volume 1 sections 2.4.2.2 and 2.4.2.3 for more information. CA-50 and CA-42 (if implemented) are expected to result in a net gain in OHV recreation access compared to existing conditions.

### 3.1.8 Comment Letter O4. Center for Biological Diversity

#### Comment O4-1

A. Legal Background

The HCP must ensure not merely the continued survival of covered species, but also the recovery of these species. "Conserve" as defined in the Federal Endangered Species Act ("ESA") includes both survival and recovery: "the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary." (16 U.S.C. § 1532(3).) Thus, the HCP must contain specific measures to "conserve," or provide for the recovery of, the species. (*Sw. Ctr. for Biological Diversity v. Bartel*, 470 F. Supp. 2d 1118, 1128 (S.D. Cal 2006); *Sierra Club. v. Babbitt*, 15 F. Supp. 2d 1274, 1278 n.3 (S.D. Ala. 1998); see also *Gifford Pinchot Task Force v. United States Fish & Wildlife Serv.*, 378 F.3d 1059, 1070 (9th Cir. 2004) ("the ESA was enacted not merely to forestall the extinction of species (i.e., promote a species survival), but to allow a species to recover to the point where it may be delisted.").) At a minimum, the ESA and implementing regulations require all HCPs to include the following: (1) a complete description of the activity sought to be authorized; (2) names of the species sought to be covered by the permit, including the number, age and sex of the species, if known; (3) the impact which will likely result from such taking; (4) what steps the applicant will take to monitor, minimize, and mitigate those impacts; (5) the funding that will be available to implement such monitoring,

minimization, and mitigation activities; (6) the procedures to be used to deal with unforeseen circumstances; and (7) what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized. (16 U.S.C. § 1539(a)(2)(A)(i)-(iv); 50 C.F.R. §§ 17.22, 17.32.) FWS cannot issue an ITP if the HCP does not contain this information. (16 U.S.C. § 1539(a)(2)(A).)

Upon reviewing a HCP and before permit issuance, the FWS must find that (i) the taking will be incidental; (ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking; (iii) the applicant will ensure that adequate funding for the plan will be provided; (iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (v) any other measures FWS requires will be met. (16 U.S.C. § 1539(a)(2)(B); 50 C.F.R. §§ 17.22, 17.32.)

The Draft HCP seeks to cover four listed animal species, (western snowy plover, California least tern, California red-legged frog, tidewater goby), six listed plant species (marsh sandwort, La Graciosa thistle, Surf Thistle, Beach Spectaclepod, Nipomo Mesa lupine, and Gambel's watercress), and two species proposed for listing (Southwestern pond turtle and western spadefoot toad).

Response to Comment O4-1

HCPs are required by FESA to be included in applications for ITPs. HCPs are intended to minimize incidental take authorized under an ITP. The main purpose of an HCP is not species recovery or delisting, but to ensure that the taking will not appreciably reduce the likelihood of survival and recovery of the species. An HCP is not a species recovery plan. See Master Response 1: HCP Purpose and ITP Issuance Requirements for more information.

CDPR acknowledges the requirements for HCPs and for issuing an ITP, which are also laid out in Section 1.5.2 of the HCP and in Master Response 1.

The commenter identifies the correct species proposed for coverage under the HCP, except for southwestern pond turtle and western spadefoot which are also covered species.

**Comment O4-2**

The project area at Oceano Dunes includes designated critical habitat for the western snowy plover, tidewater goby, La Graciosa thistle, and south-central California Coast steelhead. The Ninth Circuit Court of Appeals explained that the purpose of critical habitat designations is not merely to ensure the species' survival, but also to "carve out territory" that is "essential for the species' recovery." (Gifford Pinchot Task Force v. United States Fish & Wildlife Serv. 378 F.3d 1059, 1070 (9th Cir. 2004) (emphasis added). Under the ESA "conservation and survival as distinct, though complementary, goals, and the requirement to preserve critical habitat is designed to promote both conservation and survival." (Id.) Here, the HCP must protect critical habitat and other habitat currently used by the covered species, and also protect habitat that could be used by the covered species in the future as these populations recover and cannot appreciably reduce the likelihood of survival or recovery of the covered species and the FWS biological opinion must address the impacts to the affected critical habitats.

Response to Comment O4-2

The HCP is an applicant driven document under Section 10 of the ESA. There is no requirement under Section 10 of the ESA to evaluate adverse impacts on critical habitat. Despite this, the HCP does include a discussion of impacts on critical habitat (HCP section 4.11).

The USFWS is the federal agency responsible for issuing the ITP. Under Section 7 of the ESA, USFWS is responsible for conducting an evaluation of adverse impacts on critical habitat.

The HCP is not required to preserve critical habitat for species recovery. The HCP does include a comprehensive conservation program (HCP Chapter 5) which includes numerous measures to avoid and minimize impacts on covered species habitat, including critical habitat.

The USFWS is the regulatory authority under FESA Section 7 to assess impacts to critical habitat from all proposed ITP covered activities identified in the HCP. The EA for the Oceano Dunes District HCP concludes the impacts on critical habitat from all ITP covered activities, which includes the project activities evaluated in this EIR, would not be significant. See Master Response 7: Reduction of Boneyard and 6 Exclosures (CA-50) for impacts to SNPL and La Graciosa thistle critical habitat. The proposed new project activities would not impact tidewater goby or steelhead critical habitat. See also EIR Volume 1 section 6.3.3.

**Comment O4-3**

B. Minimal changes from 2020 to 2025 Draft HCP

The 2025 Draft HCP continues to propose dramatic reductions in protected nesting areas for SNPL and CLTE, specifically the reduction of the Boneyard Exclosure and 6 Exclosure to open additional area for off-roading during the SNPL and CLTE breeding season and to increase motorized access to Oso Flaco Lake.

Response to Comment O4-3

The commenter is correct that reduction of Boneyard and 6 Exclosures (CA-50) was proposed in the 2020 Draft HCP and is still proposed in the 2025 Draft HCP, although a criterion for reduction of the 6 Exclosure identified in 2020 Draft HCP was changed in the 2025 Draft HCP from 155 to 180 breeding SNPL averaged over 3 consecutive years (HCP section 5.2.1) as discussed in comment O4-35 below.

Riding in 40 Acres identified in the 2020 Draft HCP would be limited to trail riding, and the covered activity was renamed to Limited Trail Riding (CA-42) in the 2025 Draft HCP. See Master Response 13: Limited Trail Riding (CA-42) for more information.

The comment is incorrect about motorized access to Oso Flaco Lake. The HCP does not increase motorized access to Oso Flaco Lake.

**Comment O4-4**

East Boneyard Exclosure Eliminated Under the 2025 Draft HCP, State Parks would no longer fence off the East Boneyard Exclosure (44-49 acres). (2025 Draft HCP at 2-44 to 2-45). The 2025 draft HCP provided an update on the number of SNPL nests in the Boneyard area. "Although the Boneyard Exclosure once played a more significant role in CLTE and SNPL nesting, it no longer receives the number of nests it did prior to 2005. In fact, CLTE have not nested in the East Boneyard Exclosure at all since 2005, and only 11 SNPL nests have been established in the East Boneyard Exclosure during this time." (2025 Draft HCP at 2-44 (emphasis added)). This shows continued and potentially increased SNPL nesting in the Boneyard with 4 additional SNPL nests established in the last 5 years– the 2020 draft indicated only seven nests in the 15 years from 2005 to 2020 (2020 Draft HCP at 4- 47). The 2025 Draft HCP does not address this consistent SNPL nesting use in the East Boneyard and instead attempts to downplay the value of this area for nesting SNPL.

Response to Comment O4-4

The HCP does acknowledge the loss of SNPL protected nesting habitat and other potential impacts from removal of the East Boneyard Exclosure in Section 4.3.1.5.11. Paragraph 2 of that section states:

> Eliminating the East Boneyard Exclosure (approximately 47 acres) and incremental elimination of 6 Exclosure (62 acres) could result in the loss of up to 109 acres of protected SNPL breeding habitat. This reduction represents approximately one-third of the 368 acres of SNPL breeding habitat currently protected by the Exclosures (300 acres in the Southern Exclosure and 68 acres in North Oso Flaco Exclosure).

Any nest that was established in this area once the East Boneyard Exclosure is removed would be protected by a single-nest exclosure, and a 100-foot buffer.

Section 4.3.1.5.11 also discusses other potential impacts on nesting SNPL from removing the East Boneyard Exclosure, such as eliminating a buffer between the open riding area and SNPL nesting in the West Boneyard Exclosure and the Oso Flaco area.

Four SNPL nests in the East Boneyard Exclosure in the last five years represents less than 0.5% of all nest attempts during that time. This does not represent a substantial increase in nesting attempts in the East Boneyard Exclosure. The comment does not present any new substantial evidence changing the conclusions of the EIR on the impacts of eliminating the East Boneyard Exclosure nesting SNPL.

**Comment O4-5**

*Eliminates Reliance on PWP*

Relatedly, the 2025 Draft HCP eliminates reliance on CDPR's previously proposed Public Works Plan (PWP). "The PWP process is presently on hold, and CDPR has no current plans to move the draft PWP forward." 2025 Draft HCP at 2-49.

> As individual projects are brought forward for implementation, they will be assessed for incorporation into the HCP via amendment. Some of the smaller PWP projects could possibly be incorporated into the HCP as special projects (CA-49; section 2.2.5.10) and not require an amendment. The limited trail riding area is already included as a covered activity (CA-42; section 2.2.5.3).

(2025 Draft HCP at 2-49.) In describing the impacts of this additional motorized activity in the covered activity section, the 2025 Draft HCP provides little information about the impacts to covered species.

> 4.3.1.5.3. Limited Trail Riding Area (CA-42)
>
> The limited trail riding area will be mostly located outside the Exclosures, with only a small area in East Boneyard, and within tertiary SNPL habitat (Map 8). Vehicles riding in this area are not expected to affect SNPL nests, since SNPL are not expected to nest in tertiary habitat and thus would not be affected. Similarly, SNPL typically forage and/or roost along the shoreline and not within the trail riding area; therefore, effects on foraging and roosting SNPL are not expected.

(*Id.* at 4-44). The inclusion of limited trail riding in the East Boneyard area as a covered activity (2.2.5.3, *id*. at 2-39) increases impacts over the current use but the 2025 Draft HCP (and EA) fail to account for this, brushing the increased impacts away as "not expected."

Moreover, adding limited trail riding in the East Boneyard will increase impacts to Oso Flaco Lake and the many species that depend on it in addition to the increased impacts to SNPL nesting (as discussed below at Sections F & H, *infra*). Because even the "limited" trail riding in the East Boneyard will reduce protected habitat for the SNPL (and other species) and may increase harm including flushing, injury and mortality from motorized activities, that the Draft HCP fails to address, the FWS should not approve inclusion of the trail riding or the elimination of the East Boneyard exclosure in the.

Response to Comment O4-5

The commenter is correct that the PWP is currently on hold, as described in HCP section 2.2.7. See Master Response 5: Public Works Plan for more information.

The Limited Trail Riding (CA-42) area is outside of SNPL critical habitat and outside of suitable nesting, foraging, and roosting habitat for SNPL. SNPL are not expected to utilize the area; therefore, opening this area to year-round motor vehicles and other recreation would not impact SNPL or SNPL primary, secondary, or critical habitat. See Chapter 4 of the HCP for an analysis of the potential impacts of Limited Trail Riding (CA-42) on species covered in the HCP, and EIR Volume 1 section 6.4 for an analysis of potential impacts of this activity on covered species and other special-status species. Also see Master Response 13: Limited Trail Riding (CA-42) for more information.

**Comment O4-6**

*Future Reduction of 6 Exclosure Remains Unclear*

Potential Reductions in 6 Exclosure are not clearly explained and the impacts to covered species are not addressed.

The 2025 Draft HCP states that:

> "the 6 Exclosure may be reduced in approximately 328-foot (100-meter) increments from north to south, or CDPR may implement alternative incremental reductions— such as by adjusting the eastern fence—to better suit SNPL and CLTE management. CDPR will work with the USFWS and the appropriate stakeholders to develop a 6 Exclosure reduction that achieves additional riding area while protecting nesting shorebirds (see section 5.2.3 for a more detailed explanation of the criteria for reducing the exclosed area). If the criteria are not met for either species, the 6 Exclosure will be restored to its original extent in the following breeding season in coordination with the USFWS. Any decisions to restore the 6 Exclosure fence to ensure the criteria are met will be based on the best available science and could include additional management actions (e.g., predator management) in addition to restoring the fence size."

*Id*. at 2-45. The Criteria provided in section 5.2.3 (*Id*. at 5-9 to 5-11), have not been met for CLTE. Moreover, the use of these criteria to reduce protections and increase motorized activities in this habitat makes little sense because it is the exclosures that have allowed the breeding and population numbers to increase --- taking away those protections will cause additional harm and take of the species that is not currently occurring. This is another way in which the design of this draft HCP fails to meet the requirements of the ESA which requires reliance on the best available science for the HCP actions at the outset.

Rather than prioritize conservation of covered species, the 2025 Draft HCP proposes to allow CDPR to reduce protections in 6 Exclosure in direct opposition to the best available science that

is available now which shows that the exclosure is providing important protections for SNPL and CLTE (and contrary to both CDFW's and CCC's expert opinions). And to make matters worse, later, only if the impacts from additional motorized use in this important habitat are too great, CDPR could potentially reverse course and only then consider the "best available science"—this is the polar opposite of the precautionary principle. Ignore existing science and allow harms first, maybe correct later; rather than, protect first, carefully consider increased impacts after additional science is collected and considered.

Response to Comment O4-6

The potential impacts on covered species from the reductions of the 6 Exclosure are thoroughly explained in HCP Chapter 4, and the basis for the reductions and impacts on SNPL and CLTE are further explained in Master Response 7: Reduction of Boneyard and 6 Exclosures (CA-50).

It is true that the criteria laid out in HCP Section 5.2.3 have not been met for CLTE in some years, and the criteria for both SNPL and CLTE must be met before the 6 Exclosure can be reduced in size.

The overall goal of the HCP for all covered species is to sustain or increase local populations of the covered species and to maintain, enhance, and/or restore habitats and naturally functioning ecosystems within the context of fulfilling the mission of the Oceano Dunes District to provide recreational opportunities (HCP Section 5.2). Reduction of the 6 Exclosure when SNPL and CLTE criteria are met and using applicable AMMs to offset impacts aligns with this goal. See Master Response 3: HCP with CDPR Mission and Mandates for information on accommodating recreation and conservation.

**Comment O4-7**

*Changes in Level and Type of Anticipated Take From Covered Activities*

Another change in the 2025 Draft HCP is changes in the levels and type of anticipated take of plovers and terns, most importantly the exclusion of harm as well as all take by harassment which is largely due to OHV activities. (2025 Draft HCP at 4-62 (SNPL – anticipated take of 40 adults and/or juveniles; 80 chicks, 80 eggs over a 5-year period excluding all take by harassment); *id*. at 4-112 (CLTE, take of 15 adults/juv, 15 chicks and 22 eggs over a 5 year period excluding all take by harassment).

The exclusion of all take due to "harassment" from the anticipated take under the Draft HCP is justified based on the following statement: "Pursuant to the Principal Deputy Director's Memorandum (USFWS 2018a), harassment is not a form of take permitted under section 710(a)(1)(B) since it is not incidental take and is instead an intentional or negligent act." (2025 HCP at 1-6; 2020 Draft HCP at 1-5). However, the 2025 Draft HCP fails to note that the 2018 Memorandum was withdrawn. Rescission of the 2018 Principal Deputy Director Memorandum, FWS/AES/067974 (April 22, 2024). As the Recission explained, an intentional act—e.g. OHV riding-- which results in a likelihood of injury to listed species is harassment and a part of "incidental take" under the ESA. See 50 C.F.R. § 17.3. The purpose or intent of the activity need not be to harm listed species for harassment to occur, only that the activity results in a likelihood of injury to the listed species. As a recent district court ruling explained in detail:

> The ESA does not define ""harass""; FWS regulations define it as ""an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.""350 [50 C.F.R. § 17.3.] In evaluating

> a challenge based on a regulation, courts first determine whether a regulation is ""genuinely ambiguous,"" by ""carefully consider[ing] the text, structure, history, and purpose"" of the regulation.351 [*Kisor v. Wilkie*, 139 S. Ct. 2400, 2415, 204 L. Ed. 2d 841 (2019) (plurality opinion) (citation and internal quotation marks omitted).] If the regulation is not ambiguous, ""[t]he regulation then just means what it means—and the court must give it effect, as the court would any law.""352 [*Id*.]
>
> Plaintiffs are correct that the definition of ""harass"" that FWS applied to nondenning polar bears is inconsistent with the regulation. The regulation's text is unambiguous. ""Harass"" means an ""intentional or negligent act or omission which creates [a] likelihood of injury,""353 [50 C.F.R. § 17.3.] not an intentional or negligent act or omission which *intentionally or negligently* creates a likelihood of injury. ""Intentional or negligent"" modifies ""act,"" not ""likelihood of injury." [*See id*.]
>
> This interpretation is bolstered by the legislative history of the ESA. The House Report [on the ESA] underscored the breadth of the ""take"" definition by noting that it included ""harassment, whether intentional or not."" The Report explained that the definition ""would allow, for example, the Secretary to regulate or prohibit the activities of birdwatchers where the effect of those activities might disturb the birds and make it difficult for them to hatch or raise their young."" These comments . . . support the Secretary's interpretation that the term ""take"" in § 9 reached far more than the deliberate actions of hunters and trappers.355 [*Babbitt v. Sweet Home Chapter of Cmtys. for a Great Or.*, 515 U.S. 687, 704-05, 115 S. Ct. 2407, 132 L. Ed. 2d 597 (1995) (emphasis in original) (quoting H.R. Rep. No. 93-412, at 11 (1973)).]

*Sovereign Iñupiat for a Living Arctic v. BLM*, 701 F. Supp. 3d 862, 910-11 (D. Alaska 2023) (reversed in part on other grounds by *Ctr. for Biological Diversity v. United States BLM*, 141 F.4th 976 (9th Cir. 2025)).

Thus, if the impacts to listed species from *intentional* "harassment" could be properly ignored, the Draft HCP cannot ignore the unintentional harassment that is pervasive from OHV use at ODSVRA due activities that have a likelihood to injure listed species. Put another way, for example, while OHV riding and other motorized vehicle activities in the area are intentional actions, the noise, vibrations, and night lighting, that harass SNPL and CLTE by flushing them from habitat and/or causing habitat abandonment are highly likely and well known to occur and cause harm to the species even though they are unintentional. Therefore, the unintended harassment of listed species caused by those activities must be included as part of the incidental take of the listed species from those activities.

The Draft HCP provides some assessment of anticipated take of listed species due to direct harm, mortality and habitat destruction but no quantification of the incidental take due to harassment which leads to flushing and abandonment of nesting, rearing, loafing, and foraging habitat due to noise, vibration, dust and other associated harms.

Response to Comment O4-7

No specific comment is presented on the analysis in the EIR. Regarding noise, vibration and night lighting from motorized vehicle activities, note that such ongoing recreation is an authorized activity in the HCP area and is considered part of the environmental baseline conditions; see Master Response 6: CEQA Baseline and Scope. Effects from existing activities are discussed in HCP Chapter 4 and EIR Volume 3 Appendix D and are part of baseline

conditions in the HCP area. See also Displacement or Discontinued Use in Master Response 7: Reduction of Boneyard and 6 Exclosures (CA-50) regarding the effects of disturbance from the reduction in the 6 Exclosure.

The HCP has been revised to remove reference to the 2018 Principal Deputy Director Memorandum, and HCP Tables 4-3 and 4-5 were modified to state: "Take estimates include take observed after harassment that leads to nest or chick abandonment." The USFWS will evaluate the HCP to determine whether it adequately addresses all ITP issuance criteria, including accounting for incidental take due to harassment. See Master Response 1: HCP Purpose and ITP Issuance Requirements for more information. Reference to the memorandum has been removed from EIR Volume 1 section 6.1.1 and section 11.1. Footnote text in EIR Table 6-6 and 6-7 is revised to clarify that take estimates include take observed after harassment that leads to nest or chick abandonment.

**Comment O4-8**

C. ITP Application is Inaccurate and Misleading

The ITP application is also inaccurate and misleading. For example, the ITP application fails to address all anticipated effects on habitat for the key species that the HCP is meant to protect including the Western snowy plover and California least tern. The ITP application admits that the HCP will decrease protections in breeding habitat in several areas, but concludes that no "overall" breeding habitat will be lost.

> *Quantify the anticipated effects to their habitat.*
>
> Western snowy plover: No overall breeding habitat loss. The exclosure seasonally protecting 368 acres of breeding habitat could be reduced by up to 109 acres. Up to 35 acres of habitat outside the seasonal exclosure area could be permanently affected by special projects.
>
> California least tern: No overall breeding habitat loss. The exclosure seasonally protecting 368 acres of breeding habitat could be reduced by up to 109 acres. Up to 35 acres of habitat outside the seasonal exclosure area could be permanently affected by special projects.

(Permit Application at pdf 15, Supplemental Attachment at 2.) These conclusions are profoundly misleading, as breeding habitat clearly will be lost due to both ongoing and expanded OHV activities. Moreover, these conclusions also completely ignore the historic loss of habitat due to unpermitted OHV activities which have degraded the habitat and "taken" individual SNPL through injury and death as well as through harassment due to OHV activity which creates noise, vibration and dust which flushes birds out of habitat they would use for breeding. As the California Coastal Commission explained even the existing seasonal closures are not sufficient to protect breeding habitat.

> The 300-acre seasonal southern exclosure within the Oceano Dunes State Vehicular Recreational Area does not encompass the entire area that plovers use for foraging, breeding, and nesting. This was shown during the 2020 snowy plover breeding and nesting season when Oceano Dunes was closed to OHV use due to Covid-19 restrictions. Snowy plovers immediately expanded their territories beyond the normal bounds of the exclosure, initiating nest scrapes and sitting on active nests north of the exclosure and just south of Arroyo Grande Creek.

(CCC.2021 at 19.) The conclusions also ignore the ongoing loss of other types of habitat that will be lost under the proposed HCP including foraging and resting habitat for overwintering birds.

Response to Comment O4-8

No SNPL or CLTE breeding habitat would be lost overall under the HCP because SNPL primary and critical habitat and CLTE primary habitat will remain in the HCP area even if seasonal protection of nesting habitat is reduced. As stated in the HCP and EIR, the loss of the 6 Exclosure and East Boneyard Exclosure will result in a loss of seasonal protection of up to 109 acres (or approximately 1/3) of the 368-acre seasonal exclosure (300 acres in Southern Exclosure and 68 acres in Oso Flaco Exclosure). The potential impacts on SNPL and CLTE from reduction of the Exclosures are discussed in HCP Chapter 4, EIR Volume 1 Chapter 6, and Master Response 7: Reduction of Boneyard and 6 Exclosures (CA-50). Reduction of Exclosures will only take place if SNPL and CLTE criteria (HCP Section 5.2.3) are met and using applicable AMMs to offset impacts. Not all SNPL and CLTE primary habitat and SNPL critical habitat are seasonally protected under existing conditions in the HCP area, but these areas are still considered to be breeding habitat for these species.

The HCP acknowledges that placing special projects within SNPL and CLTE primary and secondary breeding habitat reduces the amount of habitat available to for breeding by precluding them from nesting within the footprint of the structures (Sections 4.3.1.5.10 and 4.4.1.5.10). However, many special projects will not be placed within primary and/or secondary habitat. In addition, special projects are small (i.e., not to exceed 35 acres over the permit term), and they are placed in areas where SNPL and CLTE do not typically nest (e.g., outside the Exclosures). In addition, special project plans within areas that could impact SNPL or CLTE would be submitted to the USFWS for review and approval prior to construction.

Ongoing OHV recreation is an authorized activity in the HCP area and is considered part environmental baseline conditions, see Master Response 6: CEQA Baseline and Scope. Impacts from existing activities are discussed in HCP Chapter 4 and EIR Volume 3 Appendix D and are part of baseline conditions in the HCP area.

The HCP reflects CDPR's management of multiple mandates. A continuous enlargement of the exclosure boundary to support an ever-increasing population of CLTE and SNPL is not the goal of the HCP and CDPR management of the SVRA and Pismo State Beach park units. See Master Response 3: HCP with CDPR Mission and Mandates for information on accommodating recreation and conservation and Master Response 13: Discussion of Alternatives for more information.

**Comment O4-9**

The ITP application also fails to mention impacts to the designated critical habitat within the HCP area and fails to explain the status of the area as an Environmentally Sensitive Habitat Area (ESHA) under the California Coastal Act. As the Coastal Commission's 2021 report "Ecological Significance of Oceano Dunes" provided:

> *Environmentally Sensitive Habitat Determination*
>
> All of the habitats within Oceano Dunes meet the definition of environmentally sensitive habitat area (ESHA). The area is teeming with rare vegetation communities and rare plants and animals. It also supports habitat that is especially valuable because of its special nature or role in the ecosystem. The Oceano Dunes habitats are threatened by development and human activities such as off-highway vehicle use.

(CCC.2021 at ii). This is a highly relevant legal determination of the status of the habitat within the proposed HCP area and should have been acknowledged in the ITP application.

Response to Comment O4-9

The HCP is an applicant driven document under Section 10 of the ESA. There is no requirement under Section 10 of the ESA to evaluate adverse impacts on critical habitat. Despite this, the HCP does include a discussion of impacts on critical habitat (HCP section 4.11). The USFWS is the federal agency responsible for issuing the ITP. Under Section 7 of the ESA, USFWS is responsible for conducting an evaluation of adverse impacts on critical habitat from all proposed ITP covered activities identified in the HCP. The EA for the Oceano Dunes District HCP concludes the impacts on critical habitat from all ITP covered activities, which includes the project activities evaluated in this EIR, would not be significant. See Master Response 7: Reduction of Boneyard and 6 Exclosures (CA-50).

The purpose of the HCP is to present a sustainable conservation program to the USFWS for issuance of an ITP in compliance with FESA to authorize take of listed species that is incidental to otherwise lawful activities, see Master Response 1: HCP Purpose and ITP Issuance Requirements. It is not the purpose of the HCP to meet Coastal Act requirements, including those related to ESHA. These requirements are addressed separately under CDP 4-82-300, as amended, issued by the Coastal Commission. See Master Response 4: Consistency with Coastal Act for more information.

**Comment O4-10**

Similarly, the ITP application makes conclusory statements that no habitat would be lost for aquatic and riparian obligate species, with "only" annual temporary habitat loss claimed to occur.

> *c. Quantify the anticipated effects to their habitat*
>
> . . . .
>
> Southwestern pond turtle: Up to 3 acres of aquatic habitat could be temporarily disrupted annually. Up to 1.5 acres of aquatic habitat and 38 acres of upland habitat could be permanently lost.
>
> California red-legged frog: Up to 3 acres of aquatic habitat could be temporarily disrupted annually. Up to 1.5 acres of aquatic habitat and 38 acres of upland habitat could be permanently lost.
>
> Western spadefoot: Up to 3 acres of aquatic habitat could be temporarily disrupted annually. Up to 1.5 acres of aquatic habitat and 38 acres of upland habitat could be permanently lost.
>
> Tidewater goby: Up to 5 acres of habitat could be temporarily disrupted annually. No habitat would be lost.

(*Id*.) This is profoundly misleading because the "annual temporary" disrupting activities, such as vehicles crossing Arroyo Grande Creek, activities that increase water turbidity, and disruption of upland habitat, happen throughout the year and are thus effectively permanent impacts to habitat for these species.

Response to Comment O4-10

This is a comment on existing park operations and not a comment on proposed new project activities. See Master Response 6: CEQA Baseline and Scope. See HCP Section 4.8.1.5 and EIR

Volume 3 Appendix D for more information on the existing effects of vehicle crossing of creeks on tidewater goby.

HCP sections 4.5.2, 4.6.2, and 4.7.2 list temporary impacts on up to 3 acres per year of SWPT, CRLF, and WSF aquatic habitat from routine riparian maintenance, Pismo State Beach Golf Course maintenance, and CDPR management of agricultural lands drainage ditch maintenance, and up to 3 acres per year of upland habitat from temporary air quality monitoring equipment. These activities do not occur throughout the year but are implemented as needed or on a seasonal and temporary basis. This short-term disruption of habitat will not result in a permanent reduction of habitat but may increase disturbance and/or the potential for mortality of these species that could inhabit the disturbed area.

As stated in HCP Section 4.8.2, "Under normal conditions (i.e., dry weather or low-volume storm events), routine vehicle traffic crossing at Arroyo Grande Creek likely has no impact on tidewater goby or its habitat because vehicles are prohibited from crossing the creek in any manner other than crossing as close to the ocean waterline as possible. In general, tidewater gobies typically do not occupy the surf-line outlet reach of these streams." A maximum of 5 acres of tidewater goby habitat may be temporarily affected by motorized vehicles driving through suitable habitat (HCP Map 30) if the ponded areas shift. This does not occur throughout the year but only under certain conditions when ponded areas shift, particularly in winter. Thus, impacts on tidewater goby habitat are temporary.

Although it is anticipated the replacement of the Oso Flaco Lake boardwalk (CA-48) would be located in roughly the same location, the HCP includes the permanent loss of up to 1.5 acres of SWPT, CRLF, and WSF aquatic habitat. See HCP sections 4.5.1.5.6, 4.6.1.5.7, and 4.7.1.5.7 for more information.

**Comment O4-11**

D. The HCP's Alternatives Analysis is Inadequate

The HCP would authorize damaging motorized recreation in 1,370 acres of western snowy plover (SNPL) habitat, including 412 acres of primary habitat. Nowhere in the HCP does State Parks consider reducing motorized recreation in any SNPL or California least tern (CLTE) habitat.

The HCP acknowledges that the vast majority of current take and future anticipated take of SNPL and CLTE at Oceano is from direct and indirect vehicular impacts of off-road vehicles and other vehicles driving on the beaches and dunes. (HCP 4-56 to 4-63; 4-107 to 4-112) Off-roading causes and is anticipated to cause take of SNPL through vehicle strikes, crushing of nests, strikes during night riding, nest and brood disturbance, flushing from foraging roosting and loafing areas, reducing areas of suitable habitat due to riding, and excessive trash which increases predator populations and predation (HCP 4.3 at 4-3 to 4-64). Off-roading causes and is anticipated to cause take of CLTE through vehicle strikes, nesting disturbance, reducing areas of suitable habitat due to riding, and excessive trash which increases predator populations and predation (HCP 4.4 at 4-65 to 4-114). Additional levels of take are actually caused and anticipated by mitigation measures (HCP 4.3.1.2, 4.4.1.2) intended to reduce the take of SNPL and CLTE caused by off-road activities. These measures which cause additional take include installing and maintaining fencing during nesting/fledging season, monitoring, predator control, and "habitat enhancement" (adding wrack, driftwood, and woodchips). Some of these mitigation

measures and the resultant take would not be required if vehicular use were prohibited or reduced, so they are also indirect impacts of off-roading activities.

Despite off-road activities being the proximate and indirect cause of the majority of the anticipated take of SNPL and CLTE, nowhere in their HCP did State Parks consider any reduction whatsoever of motorized recreation. In fact, the HCP proposes to dramatically expand off-roading activities into critical protected species habitat and to reduce protected breeding habitat for snowy plovers and least terns by 1/3, including by removing the Southern Exclosure during non-breeding season, which has been administratively closed year-round, and reducing the size of the 6 exclosure, which is the most important breeding area for CLTE and SNPL and a critical CLTE night roost area in the area (HCP 3.3.2.2 at 3-37; 3.3.2.8 at 3-41).

ESA section 10(a)(2)(a)(iii) requires State Parks to identify alternative actions to the proposed taking that the applicant considered and the reasons why such alternatives are not being utilized. The HCP fails to do this. Although Chapter 8 purports to address alternatives, none of the "alternatives" evaluated include any reduction whatsoever of motorized recreation, the most obvious and effective method to reduce or prevent take (HCP 8-1 to 8-2). Reducing or eliminating vehicular recreation would be the most effective measure to reduce take below levels anticipated for the project. The HCP overtly fails to consider this alternative.

The purported "no action" alternative (HCP 8.2 at 8-1) assumes continued illegal status quo operation of Oceano Dunes with ongoing illegal take of SNPL and CLTE. See Order Granting Pl.'s Mot. for Summ. J., *Center for Biological Diversity v. Quintero et al*., Case No. 2:20-cv-09965-AH, Dkt. No. 64 (C.D. Cal. Nov. 20, 2025) (holding that State Parks' current authorization of motorized vehicle use at Oceano Dunes SVRA results in the "take" of snowy plovers in violation of the ESA). The HCP does not contain a valid "no action" alternative that would eliminate or avoid illegal take. Instead, the HCP recognizes that existing operations currently result in take and rejects this alternative because USFWS would still be required to enforce the Endangered Species Act and such enforcement might result in operation shutdowns in order to prevent take.

The Draft HCP identifies three additional "alternatives": Maintain Northern Exclosure Boundary Alternative (HCP 8.3 at 8-1 to 8-2), which is the same as the proposed project except for the elimination of the 6 exclosure; Increased Patrols and/or Staffing Alternative (HCP 8.4 at 8-2), which is the proposed project plus "possibly" increasing covered species surveys and law enforcement patrols in the HCP area; and Project-by-Project Permitting (HCP 8.5 at 8-2), which would require individual ITPs for individual maintenance and/or recreation activities. None of these alternatives evaluates any substantive reduction in motorized recreation or otherwise represents a meaningful departure from the proposed project.

In addition, the alternatives discussed in the HCP are not identical to those evaluated in the EA. For example, the HCP does not include an alternative comparable to the EA's Alternative 4 (Permanent Year-Round Exclosure) (EA at 7). Conversely, the HCP includes alternatives—specifically, the Increased Patrols and/or Staffing Alternative and the Project-by-Project Permitting alternative—that are not evaluated in the EA, further underscoring the inadequacy and inconsistency of the alternatives analysis.

The Maintain Northern Exclosure Boundary Alternative (HCP 8.3 at 8-1) is rejected even though it would result in less take of listed species because the HCP concludes that the southern exclosure must be sacrificed for "recreational needs," which take priority over habitat protection for listed species. The alternatives analysis in the HCP does not find that this alternative is

infeasible. The minimal analysis of this alternative violates the requirement of ESA section 10(a)(2)(b)(ii) that the HCP minimize and mitigate the impacts of take to the maximum extent practicable.

The California Coastal Commission formally commented on the prior draft HCP (CCC 2020a), which proposed the same alternatives as the 2025 Draft HCP, and requested that State Parks consider alternatives that reduce the current level of off-road use in Oceano Dunes, including an evaluation of 15 measures that State Parks is required by the Coastal Commission to address in its now-dormant Public Works Plan (PWP) to comply with the Coastal Act. The Coastal Commission also recommended the HCP evaluate no off-road use in the park, which would clearly reduce take of the listed species covered by the HCP. Indeed, as part of the PWP process, the Coastal Commission proposed an alternative that could be considered in the HCP, and that would virtually eliminate all take of SNPL and CLTE while still allowing limited managed motorized recreation (CCC 2020b). The CCC staff recommendation was to phase out off-road use at Oceano Dunes over the next 5 years, closing the Pier Avenue entrance to vehicles and abandoning the concept of a southern entrance, which would no longer be needed. Driving and car camping would be permitted on the beach only between Grand and Pier Avenues, where there would be no impacts on listed species. There would be no further vehicular crossings of Arroyo Grande Creek. The beach south of Pier Avenue could continue to be safely used by nonmotorized Oceano residents and visitors. SNPL and CLTE could use all suitable nesting, foraging, and overwintering areas unmolested by vehicles. The HCP fails to consider any such alternatives or measures.

The fact that Chapter 8 of the HCP consists of 11 brief cursory paragraphs with 4 straw-man pseudo-alternatives shows the token consideration given in the HCP to actual alternatives that would minimize and mitigate take. The proposed HCP violates ESA section 10(a)(2)(a)(iii) by not adequately considering or evaluating alternative actions to the proposed taking that would reduce or eliminate take, and by not explaining the reasons why feasible alternatives to reduce take are not being considered or utilized.

Response to Comment O4-11

See Master Response 14: Discussion of Alternatives regarding why a No OHV Alternative was not considered in the HCP, the HCP No Action Alternative, why HCP and EIR alternatives may be different, and why the HCP Northern Boundary Alternative was not selected.

As the commenter notes, a reduced vehicle use alternative was not considered in the HCP. However, even under a reduced vehicle alternative, vehicle use will occur and the risk of potential take from vehicle strike exists. The risk exists whether there are 1,720 OHV (current CDP limit) or something much lower (e.g., 500 OHV). A reduced vehicle use alternative considered in the EIR as Alternative 4 (section 9.2.4).

See Master Response 7: Reduction of the Boneyard and 6 Exclosures (CA-50) for information on the rationale, criteria, and impacts on SNPL and CLTE from reduction of exclosures.

The USFWS will evaluate the HCP for consistency with ITP issuance criteria. See HCP Sections 1.5.2 and 8.1.

Based on recent court decisions, the 15 CDP conditions recommended in 2019 are no longer relevant. See Master Response 3: Consistency with Coastal Act and Master Response 5: Public Works Plan for more information.

**Comment O4-12**

E. The HCP Underestimates Actual Levels of Take

State Parks' estimates of adult and juvenile SNPL lethal take and/or harm are largely based on past observations of injured and dead SNPL. From 2001 to winter of 2024, 83 dead or injured adult and/or juvenile SNPL were recovered in the areas open to recreation, and some were determined to have been killed or injured by trauma. (2025 HCP 4-57). As a result, these deaths could be attributed to recreation activities, mostly motorized activities, park operations, or other activities not related to covered species management. Of the dead or injured SNPL found between 2001 and winter 2024, a total of 49 were found during the breeding season and 34 dead or injured adult and/or juvenile SNPL were recovered during the non-breeding season. (2025 HCP 4-57).

State Parks' methodology for calculating anticipated take of adults and juveniles of SNPL (2025 HCP 4.3.2) and CLTE (2025 HCP 4.4.2) is demonstrably flawed and underestimates likely actual take. The HCP (2025 HCP 4-59 n.55) states "Although the majority of dead or injured adults/juveniles are likely found, not all dead or injured adults/juveniles are assumed to be detected due to SNPL that are scavenged or buried prior to discovery and SNPL cryptic size and coloration. Therefore, this take estimate considers a worst-case scenario where additional dead or injured adults/juveniles may not have been discovered in some years in both the breeding and non-breeding seasons." However, the HCP does not specify what the fatality estimate adjustments are for SNPL or CLTE based on searcher efficiency and detection rates or carcass persistence.

A recent analysis prepared by K. Shawn Smallwood at the request of the Center for Biological Diversity concludes that State Parks' reliance on incidentally detected injured and dead western snowy plovers substantially underestimates lethal take because State Parks has not implemented systematic carcass searches or empirically grounded adjustments for carcass detectability and persistence. (Smallwood 2026). Using State Parks' annual nesting monitoring data (2010 – 2023) and incident records, Smallwood's analysis estimates true mortality by comparing reported chick fatalities to inferred chick mortality (based on chicks hatched versus fledged), then adjusting juvenile and adult fatality counts to account for under detection and age-related differences in carcass detectability. With respect to vehicle-related mortality, Smallwood estimated direct take of 72 to 104 SNPL per year. The report further explains that incidental fatality detection typically captures only a small fraction of actual mortality and identifies additional unquantified indirect mortality associated with motorized recreation, including nest abandonment, disrupted foraging, and prey loss. (Smallwood 2026). These findings demonstrate that the draft HCP's adult and juvenile take estimates—while acknowledging imperfect detection—are not supported by quantified adjustments for detection probability or carcass persistence and therefore substantially underestimate likely actual take.

One problem is that State Parks' survey methods are vague and unscientific, and discovery of SNPL and CLTE carcasses seems opportunistic. Additionally, State Parks' searches are not designed to monitor for non-lethal take in the form of harassment. The HCP states there will be daily monitoring for SNPL and CLTE during the breeding season, and weekly monitoring for SNPL during the non-breeding season. However, the HCP does not explain any of the search methodology such as whether searchers walk transects or how far out they scan from where they are walking. Because significant SNPL mortalities have been found during the non-breeding season, year-round daily surveys should be required.

Response to Comment O4-12

Though it is acknowledged that some mortalities may go undetected, the daily surveys during breeding season and weekly surveys during the non-breeding season are comprehensive and discovery of carcasses are not opportunistic. See Master Response 2: HCP Proposed Levels of Permitted Take for more information.

A CDPR expert prepared a rebuttal to the Smallwood report (CDPR 2025c) that found major flaws in the report, and CDPR does not agree with the findings of the report. If estimated take numbers of between 72 and 104 SNPL per year in the Smallwood report were accurate, the SNPL population in the HCP area would be substantially lower. The observed SNPL population could not sustain that level of take. CDPR assumes that most take instances are accounted for based on past levels of monitoring, which will continue through the term of the HCP.

CDPR considered the additional information provided in this comment and determined that it does not change the conclusions presented in the HCP or the EIR analysis.

**Comment O4-13**

F. The HCP Does Not Evaluate Activities Likely to Cause Additional Take

The HCP acknowledges that the proposed removal of the seasonal fencing along the east Boneyard Exclosure and the incremental reduction of the 6 Exclosure would reduce the amount of protected nesting habitat available for SNPL and CLTE in the HCP area by 1/3, a large portion of which is high quality nesting habitat for these species. CDFW noted in their formal comments on the 2020 draft HCP (CDFW 2020) that this large-scale habitat removal will not only result in a reduction of available protected nesting habitat, but may also lead to SNPL and CLTE nesting outside of the protected habitat areas, exposing them to additional potential impacts from human and recreation activities occurring within the HCP area. CDFW noted that additional impacts to SNPL and CLTE may also occur from nest overcrowding in the remaining protected areas, out-competition of available nesting space within the remaining exclosures, failure to breed, and/or reduced fitness. CDFW noted that by allowing HCP activities to encroach within closer proximity to the remaining areas of protected habitat, the quality of the remaining protected habitat may be reduced. CDFW concluded that the reduction of available nesting habitat and increased disturbance from HCP activities occurring within and adjacent to these areas “may also cause SNPL, CLTE and other migratory bird species to discontinue their use of these areas and the HCP area in general.""

Although the HCP acknowledges that removal of the East Boneyard breeding-season closure could disrupt SNPL and CLTE nesting in the adjacent West Boneyard due to the new vehicle traffic (2025 HCP 2-44), it merely states that additional fencing would be erected, as needed, to maintain appropriate buffers. The HCP does not evaluate whether such measures would be effective, nor does it assess the additional take risks and other impacts associated with increased disturbance, displacement, habitat degradation, or the additional fencing resulting from these changes. As a result, the HCP fails to analyze activities likely to cause additional take arising from the proposed reduction and reconfiguration of protected nesting habitat.

In addition, the HCP fails to evaluate or quantify incidental take resulting from harassment, despite acknowledging that off-highway vehicle use and other covered activities routinely generate noise, vibration, lighting, and human presence within occupied habitat. The 2025 Draft HCP expressly excludes all take by harassment from its anticipated take estimates for SNPL and CLTE, relying on withdrawn agency memorandum and an incorrect interpretation of the ESA

and its implementing regulations that is inconsistent with the law. *See* Section B (*Changes in Level and Type of Anticipated Take From Covered Activities*)*, supra*. As a result, the Draft HCP does not assess the likelihood that OHV-related disturbances and other disturbances from covered activities—which have a demonstrated history of flushing birds from nesting, rearing, loafing, and foraging habitat—will disrupt normal behavioral patterns in a manner that creates a likelihood of injury. By omitting any analysis or quantification of this pervasive form of incidental take, the Draft HCP understates total take and fails to evaluate activities that are likely to cause additional take through harassment.

Response to Comment O4-13

CDFW concerns are addressed directly in response to CDFW comment letter A2 submitted on the HCP and Recirculated Draft EIR. See responses to those comments in letter A2 above.

The potential impacts on SNPL and CLTE from reduction of the Exclosures are discussed in HCP Chapter 4, EIR Chapter 6, and Master Response 7: Reduction of Boneyard and 6 Exclosures (CA-50). Reduction of Exclosures will only take place if SNPL and CLTE criteria (HCP Section 5.2.3) are met and using applicable AMMs to offset impacts.

The HCP has been revised to remove reference to the 2018 Principal Deputy Director Memorandum, and HCP Tables 4-3 and 4-5 were modified to state: "Take estimates include take observed after harassment that leads to nest or chick abandonment."

**Comment O4-14**

G. Much of the Proposed Take is Avoidable

Section 10(a)(2)(A)(ii)-(iii) of the Endangered Species Act requires an applicant to minimize and mitigate the impacts of incidental take to the maximum extent practicable and to identify and evaluate alternative actions to the proposed taking, including the reasons why such alternatives are not being utilized. Here, State Parks has the ability to avoid or substantially reduce incidental take of SNPL and CLTE by eliminating or significantly curtailing off-road vehicle activities in the areas of the HCP where such activities are reasonably certain to result in take.

As part of the PWP process, the Coastal Commission proposed an alternative for the PWP which should be incorporated into the HCP and would virtually eliminate all take of SNPL and CLTE, while still allowing limited managed motorized recreation in appropriate areas (CCC 2020b). Adoption of such an alternative could eliminate vehicle strikes of SNPL and CLTE, and dramatically reduce nest and brood disturbance, flushing from foraging and roosting areas, reduction in areas of suitable habitat due to riding, and excessive trash which increases predator populations and predation, as well as eliminate or reduce the need to install and maintain the type 15of fencing during nesting/fledging season that could attract predators and lead to bird collisions with fences.

Because these avoidance and minimization measures are practicable and supported by an identified alternative, the Draft HCP fails to satisfy the ESA's Section 10 requirements that incidental take be minimized and mitigated to the maximum extent practicable.

Response to Comment O4-14

Take may occur anywhere within the park where federal-listed species may be present. In the breeding season, CLTE and SNPL congregate in the seasonal exclosure south of Post Marker 6. During the winter non-breeding season, SNPL disperse with some remaining and foraging widely throughout the park. Eliminating or curtailing OHV activity in areas where take could

occur would require widespread elimination of vehicle access throughout the park. This is inconsistent with the park's designation as a SVRA and its legislative mandate to provide OHV recreation. See Master Response 3: HCP with CDPR Mission and Mandates.

CDPR implements a comprehensive conservation program presented in the HCP with a proven record of supporting sustained CLTE and SNPL populations that contribute to regional populations. See Master Response 1: HCP Purpose and ITP Issuance Requirements.

The PWP and related Coastal Commission guidance are currently on hold, see Master Response 5: Public Works Plan for more information. Also see responses to comments A6-1 and A6-26.

**Comment O4-15**

H. The HCP Contains Insufficient Mitigation and Conservation Measures

Section 10(a)(2)(A)(ii) of the Endangered Species Act requires that an HCP minimize and mitigate the impacts of incidental take to the maximum extent practicable. The 2025 Draft HCP fails to meet this standard because it authorizes the removal of existing, demonstrably effective protections for SNPL and CLTE without providing mitigation measures that offset the resulting increase in take or loss of habitat function.

In its comments on the 2020 draft HCP, CDFW explicitly stated that the proposed removal of seasonal fencing erected along the Boneyard Exclosure (approximately 49 acres) and the incremental removal of seasonal fencing along the 6 Exclosure (62 acres) to allow year-round recreation in these two exclosures will have significant impacts on SNPL and CLTE that were not adequately identified or mitigated in the 2020 draft HCP. CDFW (2020) stated "the suggestion that these activities, with the proposed avoidance and minimization measures, will have a less than significant impact on SNPL and CLTE is a gross underestimation by the DEIR and HCP of the severity that the proposed activities will have on these populations and their long-term reproductive success." According to the 2025 HCP, the 6 Exclosure alone is the location where up to 87% of the CLTE population nests on an annual basis. CDFW states that the proposed HCP avoidance and minimization measures including a slow reduction of the 6 Exclosure, a reinstatement of the 6 Exclosure if success criteria are not met, and creating single nest exclosures for SNPL that nest outside of protected areas "will not replace nor offset the removal of protected nesting and foraging habitat nor meet the requirements to avoid impacts to a fully protected species." CDFW (2020) concludes that the HCP does not adequately identify or mitigate the Project's significant, or potentially significant, impacts on biological resources. The 2025 Draft HCP retains these same measures and deficiencies.

The 2025 Draft HCP no longer explicitly asserts that off-road vehicle disturbance itself is beneficial to nesting habitat, retreating from the prior draft HCP theory that rotating year-round exclosures and reopening them to recreation disturbance would maintain suitable nesting conditions by suppressing vegetation and topographic relief. Instead, the HCP acknowledges that the optimal "combination of open sand, microtopography, and scattered vegetation and debris is not fully known and has not been studied in the HCP area," (2025 HCP 2-24), and proposes target vegetation and dune manipulation within the Southern Exclosure to restore habitat productivity. Specifically, CDPR anticipates removing vegetation and dune hummocks during the non-breeding season to mimic natural disturbance processes associated with creek and river mouths, with the goal of creating artificial "blow-out" areas. However, this revised approach remains unsupported by site-specific analysis demonstrating that mechanical vegetation removal replicates natural disturbance regimes in a manner that benefits SNPL or CLTE, or that such actions would offset the loss of existing protected habitat proposed elsewhere in the HCP.

Additionally, the HCP acknowledges that seasonal off-road use from October to February in the in the 6, 7, and 8 exclosures "results in large areas of flattened terrain and barren sand with very limited scattered debris and vegetation" and necessitates "habitat enhancement" by placing driftwood, wood chips and wrack, and sometimes plants in these exclosures to improve nesting and foraging habitat for SNPL and CLTE. (2025 HCP 2-23 to 2-24). This acknowledgment demonstrates that off-road vehicle use actively degrades habitat and necessitates ongoing remedial intervention, rather than representing a condition that has been minimized to the maximum extent practicable. Yet, the Draft HCP simultaneously proposes to expand off-road vehicle access by eliminating a large portion of existing exclosures, thus further exacerbating the same habitat degradation the HCP already acknowledges.

***6 Exclosure changes***

The HCP would incrementally (7.5 acres/year over ~8 years) eliminate the 6 Exclosure (62 acres) to open 109 additional acres of now-protected breeding habitat for off-roading during the SNPL and CLTE breeding season. This would eliminate 1/3 of the current plover breeding habitat and 1/3 of the CLTE breeding habitat in the HCP area, consisting of some of the most important breeding areas for CLTE and SNPL. From 2005 to 2023, the 6 Exclosure was the location of 24–46% of all SNPL and 7–87% of all CLTE nests during the breeding period. The northern portion of Subarea 6 (slated to be removed from protection first), has been the location of the CLTE communal night roost over the last several years, although since 2020, the location has been increasingly variable. The HCP acknowledges that removing the 6 Exclosure fence could expose between 25 and 97 SNPL nests annually to off-road vehicles and expose 75 to 291 SNPL chicks to vehicle strikes each year. The HCP acknowledges that eliminating the preferred CLTE night roost area in the 6 exclosure could result in subjecting between 35 and 95 individual CLTE to vehicle strikes and/or disturbance from recreation.

The Southern Exclosure was initially extended north to Post 6 in July 2003 as a result of a consent decree that State Parks entered into with a local Sierra Club chapter in 2005. The consent decree stipulated that State Parks "shall support a northern [seasonal exclosure] boundary of Distance Marker Number 7, notwithstanding the terms of this consent decree." State Parks proposes to violate this consent decree in the HCP, claiming that sacrificing important covered species breeding habitat for off-road recreation is "compatible with natural and cultural resources conservation, specifically the conservation of SNPL and CLTE." The HCP proposes that if specific criteria are met, State Parks may approve the incremental reduction of the 6 Exclosure, and the approximately 60-acre exclosure may ultimately no longer be fenced.

Although the HCP states that Subarea 6 breeding protections would be removed in stages, and only if species' objectives are met, those objectives are set below current and historical occupancy and fledgling rates, practically ensuring they will be easily met. The criteria would be that the 6 exclosure size will not be reduced unless the overall ODSVRA SNPL breeding population size is greater than 180 breeding SNPL for 3 consecutive years with a fledge rate of 1.0 fledgling per pair over the same period; and the CLTE breeding population has a 5-year average of 35 nesting pairs and a fledge rate of 1.0 fledglings per pair. Of course, the Oceano Dunes SNPL population has met that arbitrary criteria every year since 2014, and the 180 SNPL breeding adults is substantially lower than the five-year average of 207 breeding adults. The HCP criteria of 1.0 fledgling SNPL per adult male plover per year is lower than the five-year average fledgling rate of 1.28. For CLTE, the HCP criteria of 35 breeding pairs per year is also lower than recent documentation.

The 6 Exclosure would be reduced in approximately 328-foot (100-meter) increments from north to south, or State Parks may implement alternative incremental reductions—such as by adjusting the eastern fence— "to better suit SNPL and CLTE management." (2025 HCP 2-45). In the unlikely case that the criteria were not met for either species, the 6 Exclosure will be restored to its original extent in the following breeding season in coordination with the USFWS. Once the criteria is met, the exclosure would be eliminated. These standards have the effect of allowing a decrease in breeding and fledgling success, with the exception of fledgling success for CLTE. The HCP does not provide evidence to support how these lower rates minimize and mitigate the effects of the covered activities.

The CCC (2020a) noted that the removal of Subarea 6 "will cause nests established in the remaining exclosure areas to be packed more tightly, and there is already evidence that the tight spacing of WSP and CLT nests within the existing 300-acre seasonal exclosure acreage has led to adult territorial aggression when chicks from one brood wander into the territory of another (hence the Coastal Commission's July 2019 recommendation to increase the size of the exclosure area)." In order to reduce the density of nests an alleviate adult territorial aggression on chicks, the 2025 HCP (and EA) should have considered an alternative that expanded 6 Exclosure.

The HCP also proposes that bump outs or individual nest exclosures would be used if SNPL nest in Subarea 6 following the removal of fencing. As the CCC stated, "this is not an equivalent means of protection." Although individual nest exclosures have been known to provide nest protection, they can also lead to greater predation of adult SNPL when avian predators perch on top of the exclosures and consume adults as soon as they leave the nest, with mortality of nest eggs or chicks soon to follow. The CCC (2020a) concluded that the proposed closure of the east boneyard exclosure and opening up of an additional 40 acres to OHV riding just north of Oso Flaco Lake are also likely to increase take of SNPL and CLTE. Although the 2025 HCP notes that fewer birds have nested in the east boneyard location in recent years, this exclosure area still provides an important buffer to the west boneyard area, where more SNPL nest. The CCC (2020a) states that this buffer "helps maintain a substantial distance between nesting birds and OHV riders and pedestrians. Moreover, the east boneyard exclosure has acted as a barrier for through traffic between northern and southern areas of the park during the nesting season, and from northern access to the Oso Flaco Lake area. If it is removed, it is highly likely that OHV traffic will increase in this location, thereby increasing the risk of vehicle collisions with WSP."

The CCC (2020a) notes that there has been "an alarmingly high take of [SNPL] at Oceano Dunes in recent years." In 2018, there was one documented CLTE and 36 SNPL deaths from all causes to chicks, juveniles and adults and many additional birds were injured. In 2019, the documented death rates were 3 for CLTE and 26 for SNPL. It was also noted that several of these individuals were found amidst tire tracks. The CCC (2020a) concurs that "given the difficulty of locating small birds across this vast area, these numbers undoubtedly underestimate the actual take of these listed species." That conclusion is reinforced by a recent expert analysis prepared by Smallwood, which found that State Parks' reliance on incidentally detected carcasses substantially underestimates actual mortality and that true SNPL take at ODSVRA may be an order of magnitude higher than reported, particularly for vehicle-related mortality (Smallwood 2026).

The CCC (2020a) concludes that the 2020 draft HCP would allow increased take of SNPL and CLTE by reducing existing protections. The CCC (2020a) comments that the success criteria for SNPL and CLTE "raise concerns more generally about the adequacy of the analysis of

appropriate minimization and mitigation measures" in the HCP. The CCC (2020a) recommends that the HCP "focus more on maximizing habitat protections and seeking ways to increase the occupancy of breeding pairs and fledgling rates" and is concerned that the HCP "lowers the bar for success by setting more modest goals that could then be used as justification to open up additional acreage to OHV activity, thereby neither minimizing impacts to protected species nor maximizing mitigation." Those concerns remain applicable to the current 2025 Draft HCP, which retains reduced success criteria and continues to propose the removal of existing habitat protections without demonstrating commensurate minimization or mitigation of take.

Response to Comment O4-15

The comment asserts that the proposed reduction of the Boneyard Exclosure and 6 Exclosure (CA-50) is incompatible with the FESA ITP issuance criterion to minimize and mitigate take of listed species to the maximum extent practicable (FESA section 10(a)(2)(B)(ii)) without an offset of resulting increased take or loss of habitat function. The 6 Exclosure is a 62-acre area managed within 1,138 acres set aside for OHV use in an open riding area (EIR Volume 1 section 2.1). Since its designation as a state park unit, CDPR has managed the Oceano Dunes SVRA for both recreation and resource conservation (EIR Volume 1 section 2.2). The HCP balances the FESA requirement to minimize and mitigate the take of listed species to the maximum extent practicable in context of operating an SVRA and maximizing recreation opportunity. See Master Response 3: HCP with CDPR Mission and Mandates. The HCP evaluates the effects of CA-50 on SNPL and CLTE (HCP sections 4.3.1.5.11 and 4.4.1.5.11) and presents a comprehensive conservation program (HCP chapter 5), which includes 147 SNPL AMMs and 130 CLTE AMMs (see HCP Tables 5-2 and 5-3 and EIR Volume 3 Appendix B). As stated in HCP section 5.3.2.1.1, CDPR is meeting its compensatory mitigation requirement for SNPL and CLTE through implementation of this conservation program that protects nests, chicks, juveniles, and adults through intensive monitoring, management, and control of predators. Data collected over the past two decades documents improved nest success, fledge success, and adult breeding populations within the Southern Exclosure. The EIR concludes no further mitigation is required to offset the impact of increased SNPL or CLTE take or loss of protected nesting or foraging habitat. The information provided by the comment does not present any new substantial evidence changing the conclusions of the EIR on the impacts of the exclosure reduction on SNPL or CLTE take or habitat loss. See Master Response 7: Reduction of Benyard and 6 Exclosures (CA-50) for information on impacts to SNPL and CLTE and loss of protected nesting habitat.

The purpose of the HCP is to present a sustainable conservation program to USFWS for issuance of an ITP in compliance with FESA to authorize take of listed species that is incidental to otherwise lawful activities; see Master Response 1: HCP Purpose and ITP Issuance Requirements. The USFWS will evaluate the HCP to determine if all issuance criteria are met prior to approving the HCP or issuing an ITP.

CDFW concerns are addressed directly in response to CDFW comment letter A2 submitted on the HCP and Recirculated Draft EIR. See responses to those comments in letter A2 above. The comment repeats a broad assertion made by CDFW in a 2020 comment letter that the HCP does not adequately identify or mitigate the Project's significant or potentially significant impacts on biological resources but does not provide specific comment for CDPR to address or substantial evidence that CDPR proposed actions as described in the EIR would result in potentially significant impacts.

Although the perfect combination of open sand, microtopography, and scattered vegetation and debris is not fully known and has not been formally studied in the HCP area, observations in the

HCP area do indicate that once a foredune system creates significant topographic relief and dense vegetation, it may become less productive for nesting SNPL and CLTE (CDPR 2023). Large portions of the Southern Exclosure have become less productive as the vegetation and topography have expanded and grown over time, causing reduced open habitat favored by nesting SNPL and CLTE (HCP section 2.2.2.1.2). Habitat manipulation in the Southern Exclosure (CA-12b) is not intended to offset the reduction of the 6 Exclosure, but to restore SNPL and CLTE habitat that has become less productive over time. Although site-specific analysis of habitat manipulation has not yet occurred, CDPR will continue to adjust approaches to habitat enhancement in response to data collected, input from Wildlife Agencies and other resource specialists, and site conditions (see adaptive management described in HCP section 5.5.6).

As noted in the comment and HCP section 2.2.2.1.2, OHV recreation in the non-breeding season results in large areas of flattened terrain and barren sand with very limited scattered debris and vegetation. Habitat enhancement activities consisting of adding natural materials such as driftwood, woodchips, and wrack to the exclosures and shoreline take place prior to the breeding season to off-set this impact. The comment does not demonstrate how the habitat enhancement activities are insufficient to remediate the effects of OHV use on beach debris and vegetation contributing to nesting and foraging habitat.

As the commenter noted, the location of the CLTE night roost has varied since 2020. If a night roost is found in the open riding area, CDPR will close off the night roost area with fencing as soon as possible and implement a 330-foot no-disturbance buffer, or other distance based on best available site-specific information and in consultation with Wildlife Agencies, around the night roost. See HCP section 4.4.1.4.11 for more information and Least Tern AMM 17.

As stated in the EIR project description (EIR Volume 1 section 2.4.2) the Consent Decree stipulated that the northern boundary of the seasonal exclosure be extended north from Post 7 to Post 6 and that through the HCP process the northern boundary of the seasonal exclosure would be established at Post 7. The proposed reduction of the 6 Exclosure (CA-50) would incrementally roll back the northern boundary of the seasonal exclosure from Post 6 to Post 7 if species' objectives and other regulatory requirements are met. Contrary to the comment assertion, this proposed action is consistent with and not a violation of the Consent Decree. See Master Response 7: Reduction of the Boneyard and 6 Exclosures (CA-50) rationale of proposing exclosure reductions for information on the Consent Decree. See also Master Response 14: Discussion of Alternatives regarding an expanded exclosure alternative and an alternative retaining the 6 and East Boneyard exclosures (Alternative 2).

The commenter states that SNPL and CLTE species objectives are arbitrary and set below current and historical occupancy and fledgling rates ensuring they will be easily met. See Master Response 7: Reduction of the Boneyard and 6 Exclosures (CA-50) for information on the rationale, criteria, and impacts on SNPL and CLTE from reduction of exclosures. The SNPL and CLTE biological objectives represent populations sustained at a high level in comparison to when CDPR began its conservation efforts over two decades ago (see HCP Tables 3-2 through 3-12). The purpose of the HCP is not a species recovery plan and is not required to sustain SNPL and CLTE populations at ever-increasing or yet unknown peak levels. The HCP and EIR acknowledge that the limitation of protected nesting acreage may limit the overall breeding capacity of the HCP area (Master Response 7). CDPR has identified a proposed species population criteria for reducing the seasonal exclosure that is lower than historical high levels but minimizes and mitigates the take impact to the population holistically to the maximum extent practical given CDPR's multiple mandates discussed above and in Master Response 3. As stated

in Master Response 1: HCP Purpose and ITP Issuance Requirements, the threshold biological metrics in the goals and objectives were defined based on species Recovery Plans, 5-year Reviews, expert opinion, scientific literature, CDPR species-specific monitoring data, habitat quality and acreage for each species in the HCP area, and site-specific conditions.

The comment repeats comments made by the California Coastal Commission on the 2020 draft HCP. Comments from the California Coastal Commission concerns are addressed directly in response to the California Coastal Commission comment letter A1. See Master Response 7: Reduction of Boneyard and 6 Exclosures (CA-50) regarding the effect of removing the 6 Exclosure on nesting density and overcrowding and the use of single-nest exclosures and fencing bumpouts for nests occurring outside of exclosures. Also see Master Response 7 regarding the effect of removing East Boneyard exclosure on through traffic between northern and southern areas of the park. CDPR's predator management strategy and methods have been successful at protecting breeding SNPL and CLTE; see Master Response 9: Predation. See Master Response 14: Discussion of Alternatives for information on an expanded 6 Exclosure alternative.

See response to comment O4-4 above regarding impacts on SNPL from removal of the East Boneyard Exclosure. CLTE has not nested in the East Boneyard Exclosure at all since 2005 (HCP section 2.2.5.11 and Map 13b). Riding in 40 Acres identified in the 2020 Draft HCP would be limited to trail riding affecting approximately 5 acres. CA-42 would not open up 40 acres; the covered activity was renamed to Limited Trail Riding (CA-42) in the 2025 Draft HCP for better clarity. See Master Response 13: Limited Trail Riding (CA-42). See Master Response 7: Reduction of Boneyard and 6 Exclosures (CA-50) regarding the reduction in nest buffering distances.

See response to Coastal Commission comment A1-18 regarding levels of take in 2018 and 2019 noted in the comment. Though it is acknowledged that some mortalities may go undetected, the daily surveys during breeding season and weekly surveys during the non-breeding season are comprehensive, and discovery of carcasses is not incidental. See Master Response 2: HCP Proposed Levels of Permitted Take for more information. Also see response to comment O4-12 above regarding the take estimates of the Smallwood report; CDPR disputes the findings of the report.

Regardless of historic or ongoing take levels occurring at the park, the conservation program currently being implemented by CDPR supports healthy, productive SNPL and CLTE populations contributing to the regional populations.

As noted in response to Coastal Commission comment A1-19, comment on the conservation program contained in the HCP is comment on the federal ITP application, which will be reviewed by the USFWS to determine with ITP issuance criteria are met. This is not a comment on CDPR proposed new project activities or the EIR analysis of the proposed activities. It is outside the scope of an EIR to impacts of park operations that are not subject to CEQA review. See Master Response 6: CEQA Baseline and Scope.

**Comment O4-16**

I. The HCP Will Likely Result in Additional, Unevaluated Impacts on Special Status Plant Species

The 2025 HCP acknowledges potential impacts to special status plant species from proposed mechanical trash removal, fence installation and removal, and newly proposed activities and special projects. These include potential impacts to the state and federally endangered marsh

sandwort (*Arenaria paludicola*) and Nipomo Mesa lupine (*Lupinus nipomensis*); the state threatened and federally endangered Gambel's watercress (*Nasturtium gambelii*) and La Graciosa thistle (*Cirsium scariosum* var. *Loncholepis*); and the state threatened surf thistle (*Cirsium rhothophilum*) and beach spectaclepod (*Dithyrea maritima*).

The formal CDFW comments on the 2020 draft HCP (CDFW 2020) note that not all areas with potentially suitable habitat for special-status plants in the HCP area have been surveyed by a qualified botanist following CDFW survey protocols (CDFW 2018). CDFW also advised (CDFW 2020) that the HCP needs to be revised to avoid impacts to special-status plant species by including a 50-foot no-disturbance buffer around the outer edge of plant population(s) or specific habitat type(s) that support special-status plant species observed in the HCP site. AMM 18 includes a 25-foot buffer related to Habitat Restoration Program but does not otherwise address these issues.

The HCP (2025 HCP 4.10.2.3.1) claims that impacts from mechanical trash removal on listed plant species is unlikely and minimal because mechanical raking would be conducted to remove litter in areas where recreation activities have been concentrated and the substrate is already highly disturbed, and that these areas are unlikely to support listed plants due to the high level of recreational impacts. However, the HCP (2025 HCP 4.10.2.3.1) acknowledges that listed plants such as surf thistle, La Graciosa thistle, and beach spectaclepod could occur within sand dune areas and/or areas with sparse vegetation north of Post 6. State Parks has not conducted protocol level surveys to determine if any of these listed plants occur where mechanical trash removal is proposed and thus cannot presume “unlikely” or “minimal” impacts.

The proposed Oso Flaco Campground and Public Access Project in the PWP, which is now on hold, could have potentially significant impacts on Marsh Sandwort (*Arenaria paludicola*), Gambel's Water Cress (*Nasturtium gambelli*), and La Graciosa Thistle (*Cirsium scariosum* ssp. *loncholepis*). None of these potential impacts nor any avoidance or mitigation measures are discussed in the HCP.

The HCP proposes activities that would destroy and degrade designated critical habitat for La Graciosa thistle. Approximately 94 acres of La Graciosa thistle critical habitat would be open to motorized recreation. The HCP claims that because these 94 acres have been subjected to degradation by motorized recreation and are outside of protected vegetation islands, they do not currently contain the physical and biological features for La Graciosa thistle in appropriate quantity and spatial arrangement necessary to provide the features essential to the conservation of La Graciosa thistle. This does not somehow remove these areas from critical habitat. Fencing these 94 areas and preventing off-road activity would allow the physical and biological features for La Graciosa thistle to return. An additional 4.8 acres of La Graciosa thistle critical habitat currently closed to recreation may be opened up to off-road activity on a seasonal basis, and a motorized trail system may also be installed in the area.

Up to 142 additional acres of La Graciosa thistle critical habitat may be affected by cultural resource management, dust control activities, the construction of special projects, and the riding trail due to ground disturbance or new vegetation planting associated with these activities. (2025 HCP 4-222). The dust control activities will primarily be installed in sandy dune habitat, so no impacts to existing mesic habitats are expected, and any vegetation installed potentially provides new habitat for La Graciosa thistle colonization. Similarly, sensitive cultural resources sites are typically protected from recreation activities and thus may also benefit La Graciosa thistle by prohibiting recreation activities from La Graciosa thistle habitat. A new facility constructed as a

special project within La Graciosa thistle critical habitat would permanently remove an apparent 35 acres of critical habitat. The HCP tries to rationalize the permanent loss of this 35-acres of critical habitat because it only represents 0.01 percent of the total amount of critical habitat currently available within the HCP area.

The HCP (2025 HCP 4-222) acknowledges that motorized recreation may affect La Graciosa thistle critical habitat by crushing vegetation, seedlings, and seeds of plants representative of the vegetation islands, including La Graciosa thistle that may occur outside of the protected vegetation islands thereby preventing migration of vegetation in these islands into the areas open to riding; and that motorized recreation may indirectly affect the vegetation islands by increasing sand movement into the vegetated islands and other vegetated critical habitat.

The HCP claims AMMs listed in section 5.3 will be implemented to minimize effects on La Graciosa thistle critical habitat, but does not explain how this applies to the 35 acres permanently lost for construction of a special facility nor does it address the nearly 100 acres that will be impacted by off-road activity.

Response to Comment O4-16

CDFW concerns are addressed directly in response to CDFW comment letters A2.

Although modeled habitat for surf thistle and beach spectaclepod occur in the area proposed for mechanical trash removal (HCP Map 18), heavy OHV recreation in this area likely precludes these species from occurring. Consistent with the determination in the HCP, EIR Volume 1 section 6.3.2.13, concludes the area proposed for mechanical trash removal is unlikely to support special-status plants, thus resulting in a less-than-significant impact on such species. There is no modeled habitat for La Graciosa thistle in this area and there are no known occurrences of any of these species in the area. See HCP section 4.10.2.3.1 for more information.

CDPR regularly monitors listed plants using established field techniques at appropriate times and the locations of listed plants are well documented in the HCP area. See HCP sections 2.2.2.1.5 and 2.2.2.4 for more information.

As the commenter notes, the PWP and related projects are currently on hold, see Master Response 5: Public Works Plan for more information.

The USFWS is the regulatory authority under FESA Section 7 to assess impacts to La Graciosa thistle critical habitat from all proposed ITP covered activities identified in the HCP. See the response to comment O4-2 above regarding impacts on critical habitat. See Master Response 7: Reduction of Boneyard and 6 Exclosures (CA-50).

**Comment O4-17**

J. The HCP Should Address State Parks' Past Non-Compliance with the Endangered Species Act and California Conservation Laws.

State Parks' long history of refusal to comply with the Endangered Species Act raises questions about the likelihood of State Parks compliance with promised mitigations and permit conditions in the HCP. Most recently, in November 2025, the U.S. District Court for the Central District of California has ruled that State Parks has violated the Endangered Species Act by allowing motorized vehicle use that unlawfully takes SNPL at ODSVRA. Order Granting Pl.'s Mot. for Summ. J., *Center for Biological Diversity v. Quintero et al.*, Case No. 2:20-cv-09965-AH, Dkt. No. 64 (C.D. Cal. Nov. 20, 2025).

In June 2020 State Parks staff were caught illegally and deliberately interfering with nesting of numerous SNPL at Oceano Dunes. SNPL had expanded their nesting and foraging areas since the beach was closed to vehicles in late March 2020 by the COVID-19 crisis. (See CCC.2021 at 19; Center for Biological Diversity. 2020a, 2020b, 2020c, 2020d.) State Parks was documented and admitted attempting to prevent plovers from nesting in former off-road riding areas, with staff scuffing out nesting "scrapes" made by plovers and installing mylar flagging to deter expanded nesting. State Parks also deployed graders and other heavy equipment on the beach near plover nesting areas without a required CDP, likely disturbing nesting birds. The California Coastal Commission documented these violations and clarified that interfering with plover nesting and grading violated the Coastal Act in Commission letters of June 16 and July 3, 2020 (CCC 2020d, 2020e). The CCC issued a cease and desist order by consent decree on July 8, 2020 (CCC 2020f). This interference with nesting activity in favor of motorized OHV riding, may not be an isolated incident—but it is a documented incident that shows the priorities of State Parks. In addition, State Parks also has failed to obtain a NCCP required under California state law—although it has said it would do so for years.

FWS must assess that State Parks' proposed 2025 HCP and the promised mitigations in that light and consider whether the proposal is workable and will actually result in the promised conservation for the covered species.

Response to Comment O4-17

The commenter cites the recent court case regarding violation of the ESA in the HCP area due to take of SNPL, *Center for Biological Diversity v. Quintero et al*. The purpose of the HCP is to present a sustainable conservation program to the USFWS for issuance of an ITP in compliance with FESA to authorize take of listed species that is incidental to otherwise lawful activities. See Master Response 1: HCP Purpose and ITP Issuance Requirements for more information.

CDPR acknowledges the cease-and-desist order issued by the Coastal Commission in 2020. This is not a comment on the EIR or HCP. CDPR would seek to continue operations in a manner that avoids take of fully protected species during the development of an NCCP. See Master Response 10: California Fully Protected Species and NCCP for more information.

USFWS has the ability and capacity to enforce compliance of federal ITP terms and conditions. The USFWS will evaluate the HCP to determine whether it adequately addresses all ITP issuance criteria.

**Comment O4-18**

K. The Best Available Science on Pesticide Exposure Not Included in the Analysis and Must be Considered

The Center raised toxicity issues with some of these pesticides in our June 1, 2020 and December 21, 2020 comments on the draft HCP (CBD 2020f, and 2020g), those comments are attached and incorporated herein by reference. The Center remains concerned about the use of pesticides in this ecosystem. Neither the 2025 Draft HCP nor the Recirculated EA provide the indepth analysis that is necessary to fully disclose the potential impacts of these herbicides. Appendix H relies on out-dated information on the pesticides that are discussed. See Appx. H at 8-9 (no references after 2019).

In 2020 the Center submitted information about Aminocyclopyrachlor, Clethodim, Glyphosate,Triclopyr, and Fluazifop-P-Butyl which included more recent studies and information than presented in the 2020 HCP and EA, but the applicant and FWS have not

addressed or analyzed much of that information which may require the agencies to revise conclusions about risk of exposure to covered and sensitive species and habitats in the HCP and further avoidance, minimization and mitigation actions for pesticides. And there is newer information about several of these pesticides specifically glyphosate (Roundup), Triclopyr (Garlon), Aminopyralid (Milestone) some of which is provided below.

The Center recognizes that the use of pesticides in the HCP is almost exclusively to control invasive species and encourage re-establishment of native dune and wetland vegetation, to the benefit of listed species. However, additional safeguards are required to minimize impacts to species including humans.

Use of pesticides in the 2025 Draft HCP is discussed (2025 HCP at 2-45 to 2-47) and a detailed description of these pesticides and their toxicity is included in Appendix H. Pesticides currently used and proposed for continued use in the HCP area include the following:

- Glyphosate (Roundup)
- Imazapyr
- Fluazifop p butyl (Fusilade)
- Triclopyr (Garlon)
- Aminocyclopyrachlor (Perspective)
- Chlorsulfuron (Perspective)
- Aminopyralid (Milestone)
- Clethodim (Vaquero)
- Sethoxydim (Poast)
- VectoBac G
- Crosshair
- Surfactants

Three main herbicides are used throughout the HCP area as part of IPM program implementation, including glyphosate (Roundup), imazapyr, and fluazifop-Pbutyl (Fusilade). Triclopyr (Garlon), aminocyclopyrachlor + chlorsulfuron (Perspective), and aminopyralid (Milestone) are used infrequently in the HCP area.

(*Id.* at 2-46 to 2-47.)

In addition to the information provided in 2020, below is some newer science on three of the pesticides currently in-use and proposed for continued use in the HCP area and as they relate to the proposed covered species.

***Glyphosate (Roundup)***

A 2015 EPA analysis found multiple environmental harms from glyphosate use. Use of glyphosate in accordance with the label was found to:

1) Result in concentrations that can potentially impact the survival and biomass of aquatic plants, upland plants, and riparian/wetland plants.

2) Result in residues on foliage that can potentially impact the growth of herbivorous birds, reptiles and terrestrial amphibians.

3) Potentially impact the growth and reproduction of terrestrial mammals following ground applications of glyphosate.

This analysis also indicated that considerable no-spray buffers would be needed to keep off target plants from being harmed by glyphosate use, more than 1000 feet for certain aerial applications and nearly 400 feet for certain ground applications. The states of California and Arkansas both adopted mandatory no-spray buffers of 500 feet for aerial applications.

Ecological incident data also reinforce the finding that the current labelled uses of glyphosate are having devastating effects to plant and animal life outside of the sprayed field. Approximately 600 incidents have been reported and logged on the Ecological Incident Information System (EIIS) and Avian Monitoring Information System (AIMS) databases. A separate Incident Data System (IDS) database has identified 269 separate aggregate incident reports. Ecological incidents are also significantly underreported for pesticides so this should be viewed as the absolute bare minimum of ecological incidents that involve glyphosate.

A final biological evaluation was released by the EPA on how use of glyphosate may affect all endangered and threatened species in the United States. The agency concluded that glyphosate would "Likely Adversely Affect" 1676 out of 1795 listed species (93%) and adversely modify 759 out of 792 designated critical habitat in the U.S. This includes nearly every single listed species and critical habitat in the United States and all that reside in or near the action area being considered.

The EPA has found that glyphosate poses a risk to a federally listed amphibian, the California Red-legged frog, making a Likely to Adversely Affect determination for the species. Some glyphosate formulations and co-formulants have been found to be "highly toxic" to certain species of fish.

Researchers have found negative associations between glyphosate use and monarch population size. Use of glyphosate has been tied to widespread declines of milkweed, which is essential to monarch butterfly survival. This is of particular concern given the monarch butterfly populations in the HCP area at the Pismo State Beach monarch grove.

The World Health Organization's International Agency for Research on Cancer ("IARC") conducted an exhaustive review of the publicly available scientific literature in 2015 and concluded that glyphosate is "probably carcinogenic to humans" (Group 2A). IARC carefully weighed evidence in three areas, and found that: 1) There was sufficient evidence to conclude that glyphosate causes cancer in animal studies; 2) There was limited evidence that exposure to glyphosate causes cancer (non-Hodgkin lymphoma) in humans; and 3) There was strong evidence that glyphosate can damage DNA and induce oxidative stress,19 two well characterized pathways that can lead to cancer.

IARC's finding that glyphosate causes cancer in animals prompted California's Office of Environmental Health Hazard Assessment to list glyphosate as a known carcinogen under California's Proposition 65 law.21The agency has also finalized a No Significant Risk Level for glyphosate, which estimated the daily exposure level that will result in a 1/100,000 chance of developing cancer, of 1.1 mg/day.

***Triclopyr (Garlon)***

EPA has found that the use of triclopyr can expose birds, reptiles and terrestrial amphibians to levels of the herbicide that cause reduced survival of offspring. The same uses can expose mammals to 37 times the amount of triclopyr known to reduce litter size. All labelled uses of triclopyr were found to expose adult and larval bees to levels estimated to reduce survival and larval emergence. Harm to bee larva was estimated more than 1000 feet from the application site.

Terrestrial plants were also estimated to be exposed to levels of triclopyr that were known to cause harm more than 1000 feet away from the site of application, even for ground applications. Triclopyr butoxyethyl ester (BEE) is classified as "highly toxic" to aquatic organisms. Range, pastureland and meadow uses of BEE can expose fish and aquatic invertebrates to levels of the pesticide known to cause acute harm. The EPA has found that triclopyr poses a risk to a federally listed amphibian, the California Red-legged frog, making a Likely to Adversely Affect determination for the species.

***Aminopyralid (Milestone)***

EPA has found that aminopyralid poses a high risk to non-target plants, particularly broad-leafed plants. Native plants in terrestrial and aquatic habitats were both found to have high risk of decreased biomass when growing near where aminopyralid is sprayed. The highest risks were for spot treatment (which has a higher application rate than other treatment methods), with nearby native plants potentially exposed to aminopyralid runoff and spray drift at levels more than 100 times higher than the known toxic concentration. Risks of concern for ground and aerial applications of aminopyralid extended more than 1,000 ft from the site of application.

As noted above, unfortunately, the 20205 Draft HCP, Recirculated EA and the appendices fail to use the most current information, the best available science, and therefore fail to adequately analyze the ongoing and potential impacts from the use of various pesticides on the covered species and their habitats.

In addition to the information provided in 2020, below is some of the latest science on some of the pesticides currently in-use and proposed for continued use in the HCP area and as they relate to the proposed covered species.

The Service needs to provide a more comprehensive analysis of the potential impacts associated with all of the pesticides using the best and most current available science in order to comply with the ESA and NEPA. Once analyzed, some herbicides may be too risky to continue use and additional AMMs may be needed, including buffers for application to protect native and covered species, limits on the frequency of application and other issues identified through the analysis process.

Response to Comment O4-18

Pesticide use in the HCP area is part of existing park operations. As stated in EIR Volume 1 section 3.1 (Analytical Methodology), existing park operations are part of the existing physical setting of the HCP project site and are baseline conditions for evaluating the proposed HCP project and do not need to be authorized. Therefore, existing park operations are not evaluated for impacts as new activities. No changes are proposed to the existing pesticide/herbicide program used by CDPR in the HCP Area as documented in the HCP. See Master Response 6: CEQA Baseline and Scope.

As the commenter states, DPR uses pesticides to control invasive species and encourage re-establishment of native dune and wetland vegetation. Targeted treatment of invasive species by CDPR staff and contractors is determined by the implementation of an Integrated Pest Management (IPM) program, which establishes thresholds for when to control invasive species; address public health and safety, economic, beneficial use, legal, and aesthetic requirements; and considers a variety of control methods including mechanical removal and/or native species establishment in addition to pesticide use. All pesticides used in the HCP area are stored, applied,

and disposed of in accordance with label instructions and in compliance with state and local laws. See HCP section 2.2.5.12 for more information.

A detailed description of pesticides used in the HCP area, their toxicity, and use in the HCP area is included in HCP Appendix H. Information presented previously in comments on the 2020 Draft EIR was considered and HCP Appendix H was updated as appropriate. The potential effect of these pesticides on each of the covered species is described in HCP Chapter 4 in the discussion of CA-51. CDPR employs safeguards identified in AMMs listed for pesticide use (CA-51) in HCP Tables 5-2 through 5-8 to protect non-target species.

**Comment O4-19**

L. The HCP Fails to Address the Full Effects of Mechanical Trash Removal

The HCP proposes continue mechanical trash removal via raking or grooming in a portion of the HCP area, including above the wrack line in the Grand Avenue and Pier Avenue entrance areas, the Post 2 trash dumpster areas, and the Post 2 south to Post 4.5. Additionally, mechanical trash removal will also occur in the open area to Post 6, which is east of the 48-acre foredune area. (HCP 2-31).

CDFW raised the issue in their formal comments on the 2020 draft HCP (CDFW 2020) that beach grooming and raking has been shown to reduce the amount of available foraging habitat for avian and other wildlife species by creating a reduction and change in the composition and availability of invertebrates by altering the beach ecosystem in these areas. CDFW noted that invertebrate species provide an invaluable food resource to numerous populations of migrating, overwintering, nesting and foraging bird species that inhabit the HCP area and this activity may reduce or eliminate the HCP area's ability to continue to serve as a suitable stopover for migrating and overwintering birds, impacting the area's ability to continue to support the diversity and density of bird species that travel through the area and use it as an important migratory corridor. CDFW noted that mechanical trash removal in these areas could also result in permanent changes to the dune composition, further reduce the availability of potential nesting habitat for SNPL, and could increase disturbance to adjacent SNPL nesting and foraging habitat—even with the 500-foot buffer from known nest sites proposed at the time, which the current draft HCP has eliminated. CDFW stated that continued disturbance from mechanical trash removal could also lead to the preclusion of SNPL and other bird species from nesting and/or foraging in this area in the future.

The HCP states that mechanical trash removal would only occur above the wrack line and would not occur within vegetated areas or within any fenced closed areas where known SNPL or CLTE nesting occurs. Lagoon or creek areas would also be avoided. The HCP states that because mechanical trash removal will not occur within areas encompassed by the seasonal exclosures, direct effects on SNPL nests within the exclosure will not occur. The HCP asserts that mechanical trash removal activities are designed to avoid known seasonal nesting SNPL or CLTE and to prevent disturbances or conflicts associated with these activities. However, the HCP (page 4-30) acknowledges that SNPL are known to winter in areas where mechanical trash removal may occur, which puts SNPL at risk for impact and injury.

The HCP acknowledges that mechanical trash removal could adversely affect favorable SNPL nesting habitat (i.e., primary and secondary habitat) in the riding area by altering dune composition and topography. Specifically, mechanical trash removal could reduce microtopography and/or organic surface materials (e.g., driftwood and campfire charcoal) that are scattered throughout the HCP area above the wrack line. (HCP 4-31). The HCP states that

most mechanical trash removal will be conducted to remove litter in areas where recreation activities have been concentrated and the substrate is already highly disturbed, and that these areas have supported marginally suitable SNPL nesting habitat due to the high level of recreation; therefore, the HCP concludes that the effect will be minimal.

The HCP states that although mechanical trash removal will occur above the wrack line, mechanical trash removal during the summer could remove scattered debris (e.g., driftwood and kelp) from the previous winter wrack line still present in the beach area above the newer wrack line, which is likely important habitat for wrack-associated beach invertebrates. (HCP 4-32). If mechanical trash removal occurs frequently, this material may not have time to naturally develop again, and species richness, abundance, and biomass of wrack associated invertebrates that are important SNPL prey resources could decline. As a result, SNPL could be impacted by a reduced prey source.

The HCP includes a number of mitigation measures which are claimed to minimize the impacts from mechanical trash removal. These include:

> AMM 106 - Mechanical trash removal will not occur in areas where any SNPL are present.
>
> AMM 107 - Mechanical trash removal will only occur above the highest high tide, avoid all wrack/surf cast kelp, avoid all live vegetation, and avoid lagoons and flowing creeks.
>
> AMM 108 - Equipment will observe all speed limits and will not exceed 10 mph.
>
> AMM 109 - Mechanical trash removal will not be conducted within vegetated areas or within any fenced closed areas where known SNPL nesting occurs (such as the Southern Exclosure or 48-acre foredune area) during the breeding or non-breeding season.
>
> AMM 110 – Qualified biologists/Natural resources staff will inspect and approve the area subject to mechanical trash removal prior to each deployment. Qualified biologists/Natural resources staff will remain on site or be immediately available for monitoring purposes.
>
> AMM 111 - In conjunction with mechanical trash removal, CDPR will implement a study to establish baseline conditions of invertebrate populations, including talitrids, and to determine the impact of mechanical trash removal on these populations. The study will, at a minimum, compare invertebrate abundance in mechanical trash removal areas to baseline conditions prior to the start of mechanical trash removal to areas where mechanical trash removal is absent. If CDPR finds a significant decline in invertebrate numbers in mechanical trash removal areas, additional measures will be implemented (e.g., habitat enhancement measures, reduction in frequency of mechanical trash removal, and/or reduction in mechanical trash removal locations).

The HCP also cites habitat enhancement measures implemented by State Parks to offset the impacts some impacts of mechanical trash removal on SNPL critical habitat. The habitat enhancement activity includes collecting wrack and placing it on the shoreline of the Southern Exclosure at the beginning of the breeding season to provide cover for nesting SNPL and inoculating the wrack with talitrids to ensure a sustainable population of wrack-associated invertebrates, which are SNPL prey, are present in main SNPL breeding and foraging area (i.e., the Southern Exclosure shoreline). (HCP at 4-218).

The HCP cites in particular AMM 110 as ensuring that mechanical trash removal will have a minimal impact on wintering SNPL foraging opportunities and the quality of their habitat. However, CDFW (2020) specifically addressed this study and additional measures: "this does not guarantee the protection of this invaluable food resource, nor does it guarantee the Project's ability to reestablish not only the abundance, but the diversity of the invertebrate population. The DEIR and HCP also do not describe nor reference whether an exhaustive literature review was conducted and whether results and conclusions could be extrapolated from previous work to further refine the proposed future study testing and methodologies." CDFW recommended that the HCP be revised to include a discussion of previous studies and literature regarding mechanical beach disturbance and impacts on invertebrate populations. CDFW (2020) stated that absent data to demonstrate the veracity of the conclusions in the HCP, the suggestion that impacts from mechanical trash removal would be short-term and temporary because the activity will only occur for a short duration "appears to be a mischaracterization" and that mechanical trash removal may have a lasting impact on bird populations and their long-term reproductive success.

Response to Comment O4-19

CDFW concerns are addressed directly in response to CDFW comment letter A2.

Potential impacts of mechanical trash removal on SNPL and CLTE are discussed in HCP sections 4.3.1.3.2 and 4.4.1.3.2, respectively, and in Master Response 12: Mechanical Trash Removal (CA-21). Potential impacts of mechanical trash removal on other nesting birds and wintering/migratory birds are discussed in EIR Volume 1 sections 6.3.2.9 and 6.3.2.10 and EIR Volume 3 Appendix D.

The EIR includes the results of a literature review (MIG, Inc. 2025b) on the effects of mechanical trash removal in beach sand areas (see EIR Volume 1 section 6.3.3 discussion of CA-21). The literature review found the scale and intensity of mechanical trash removal proposed at Oceano Dunes is inconsistent with cleaning regimes reflected in the research. The protective measures and recommendations repeated throughout the literature included the use of fencing, wrack avoidance and relocation techniques, and limited spatial and temporal use of mechanical trash removal have been integrated in the AMMs specifically for CA-21 (AMM 102–111) and more broadly for each of the HCP covered species (HCP section 5.3). As proposed, the HCP AMMs and operational plan includes a range of measures that avoid and minimize the ecological impacts and concerns raised in the literature and CDFW. Based on the limited implementation of mechanical trash removal and AMMs proposed in the HCP, mechanical trash removal at Oceano Dunes should be considered a less-than-significant impact.

The USFWS is the regulatory authority under FESA Section 7 to assess impacts to SNPL critical habitat from all proposed ITP covered activities identified in the HCP. The EA for the Oceano Dunes District HCP concludes the impacts on critical habitat from all ITP covered activities, which includes the project activities evaluated in this EIR, would not be significant. See Master Response 7: Reduction of Boneyard and 6 Exclosures (CA-50).

The information provided by the comment does not present any new substantial evidence changing the conclusions of the EIR on the impacts of mechanical trash removal.

**Comment O4-20**

*A. Project Description and Baseline or Environmental Setting*

The Recirculated DEIR continues to include as part of the environmental setting all of the activities currently ongoing in the Project area although some have been found unlawful under the ESA (as explained above), and for which there is no State law permit either in the form of an approved NCCP. This means that the identification and analysis of impacts is truncated from the outset and the DEIR has largely ignored many of the significant impacts of the Project which the HCP is seeking to "cover" and which a future NCCP could potentially cover. As a result the DEIR is misleading and inadequate.

Response to Comment O4-20

As stated in EIR Volume 1 section 3.1 (Analytical Methodology), existing park operations are part of the existing physical setting of the HCP project site and are baseline conditions for evaluating the proposed HCP project and do not need to be authorized. Therefore, existing park operations are not evaluated for impacts as new activities. See Master Response 6: CEQA Baseline and Scope for more information. Potential impacts from existing park operations on covered species and other biological resources are discussed EIR Volume 3 Appendix D.

CDPR would seek to continue operations to avoid take of fully protected species during the development of an NCCP. See Master Response 10: California Fully Protected Species and NCCP for more information.

**Comment O4-21**

*B. Identification of Impacts is Incomplete*

The DEIR excludes consideration of harassment as part of the impacts of the Project. Regardless of whether harassment is a form of take under the FESA or CESA (see DEIR at 6-2, 6-3), or the regulatory landscape, harassment of shorebirds caused by noise, vibration, dust and other impacts of motorized riding in their habitat is a real, on the ground biological impact that must be considered by State Parks in the DEIR, but was not. But the DEIR admits that harassment occurs. "Documented incidents of CLTE and SNPL take (mortality, injury, harassment) have occurred from vehicle strike, visitor disturbance, and from park management (see Table 6-6 and Table 6-7)." (DEIR at 9-2 (describing considered but rejected alternative of "No Take Park Operations.")

Response to Comment O4-21

Under FESA, "harass" in the definition of "take" means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. (CFR § 17.3). CEQA does not require consideration of harassment as defined in the ESA as part of an EIR impact analysis. CEQA does require direct and indirect significant impacts of the project on the environment to be clearly identified and described (CEQA Guidelines Section 1516.2(a)), regardless of the legal definition of those impacts. The EIR does consider direct and indirect impacts on special-status, nesting, and wintering shorebirds in Chapter 6. Examples of direct impacts considered include the potential for new covered activities to cause injury, mortality, or direct disturbance. Examples of indirect impacts considered include the potential for new covered activities to result in increased predation, reduced buffers, and overcrowding.

Also note that ongoing park operations are part of the environmental setting and are not new covered activities analyzed in the EIR. See Master Response 6: CEQA Baseline and Scope for more information.

**Comment O4-22**

The DEIR also fails to identify the impacts to ESHA. All habitat in Oceano Dunes SVRA is defined as an Environmentally Sensitive Habitat Area (ESHA) by the Coastal Commission and ESHA must be protected. (Pub. Res. Code § 30240; Bolsa Chica Land Trust v. Superior Court (1999) 71 Cal. App. 4th 493, 507-508.) As the California Supreme Court recently explained:

> ESHA, however, are "rare or especially valuable" habitat areas in the coastal zone, given enhanced protection by the Coastal Act. (Pub. Res. Code § 30107.5.) They must be "protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas." ([Id.] § 30240, subd. (a).)

(Banning Ranch Conservancy v. City of Newport Beach (2017) 2 Cal. 5th 918, 936.) The Supreme Court held that the City's CEQA review in that case "fell short by failing to account for the Coastal Act's ESHA protections" and "also ignored the practical reality that the project must ultimately pass muster under the Coastal Act." (Id. at 941-42.)

The Recirculated Draft EIR falls short in its evaluation of ESHA—trying to devalue the current habitat in an attempt to ignore impacts to this critical resource. For example, noting that the impactful uses had predated the exclosures, the DEIR attempts to minimize and ignore the significant impacts to ESHA from removing the East Boneyard and Exclosure 6 protections and allowing riding in these areas. (DEIR at 4-22 to 4-24). This builds on the DEIR's use of an unlawful baseline to justify continued impacts and thereby the DEIR fails to identify or analyze this and other significant impacts to resources from the Project.

Similarly, regarding the proposal for mechanical trash removal, the DEIR understates its impacts which also include driving heavy equipment in the ESHA and has in the past been used in the wrack line where it impacts key foraging habitat:

> General Facilities Maintenance (CA-21) - Mechanical Trash Removal CA-21 mechanical trash removal involves periodic raking of the sand surface to a depth of 2 to 6 inches to remove debris and organic material. Mechanical trash removal does not involve grading, removal, or harvest of vegetation, change the density or intensity of use of land, or introduce solid material into the environment. Mechanical trash removal would be infrequent and occur only in dry beach areas of highest recreational use. Mechanical trash removal would not impact special-status plants or wildlife nor substantially alter critical habitat (Biology section 6.3). Given CDPR's AMMs, such as conducting mechanical trash removal only above the highest tide, avoiding active wrack and surf cast kelp, avoiding all live vegetation, avoiding lagoons and flowing creeks, the impact on ESHA is not significant. Mechanical trash removal is consistent with Coastal Act section 30240.

DEIR at 4-22.

In light of the EIR's incomplete impact analysis, the DEIR fails to provide mitigation for impacts to critical habitat or ESHA.

Response to Comment O4-22

The EIR did consider potential impacts on ESHA and critical habitat in Volume 1 section 6.3.3 Sensitive Habitats. Potential impacts on SNPL critical habitat is also discussed in EIR Volume 1

section 6.3.2.1 Western Snowy Plover. The analysis includes implementation of AMMs, which are incorporated into the HCP's conservation program. The EIR concludes the impacts of new actions on designated critical habitat and ESHA would be less than significant; no mitigation is required. The comment has no substantial evidence that refutes the analysis in the EIR.

The USFWS is the regulatory authority under FESA Section 7 to assess impacts to critical habitat from all proposed ITP covered activities identified in the HCP. The EA for the Oceano Dunes District HCP concludes the impacts on critical habitat from all ITP covered activities, which includes the project activities evaluated in this EIR, would not be significant. See Master Response 7: Reduction of Boneyard and 6 Exclosures (CA-50).

The EIR did not use an illegal baseline, see Master Response 6: CEQA Baseline and Scope for more information. Also see Master Response 4: Consistency with Coastal Act, Master Response 7: Reduction of the Boneyard and 6 Exclosures (CA-50), and Master Response 12: Mechanical Trash Removal (CA-21).

**Comment O4-23**

*C. Alternatives Fail to Address Needed Avoidance and Minimization*

The Recirculated DEIR addresses only 4 alternatives in detail. "No Project Alternative; 2) Reduced Disturbance in Dust Emission Areas; 3) Permanent Year-Round Exclosures; and 4) Reduced Vehicle Use Limits." (DEIR at S-11 to S-13.) None of the alternatives address avoidance of harassment, limiting night driving, expansion of protections for nesting birds, or provide other avoidance measures that would substantially reduce significant impacts.

The "No Take Park Operations." (DEIR at 9-2 to 9-3) is summarily rejected from consideration although it would avoid significant impacts. This alternative should have been fully considered. Other alternatives that are summarily rejected could provide some avoidance of impacts including the Night Closure and Seasonal Closure to Motorized Recreation. (DEIR at 9-6 to 9-8.)

In particular, the EIR should have fully considered the Seasonal Closure to Motorized Recreation alternative which would fully closed some areas to riding seasonally which the DEIR admits would avoid some take of SNPL, even if not all impacts. (DEIR at 9-7) And that is without considering the reduction in harassment.

In addition, the EIR should have considered an alternative that would close some areas year round to motorized recreation to at least reduce harassment of shorebirds via noise, vibrations and dust, rather than provide fenced exclosures with riding surrounding them which subjects these species to harassment year-round including during breeding, fledging and overwintering.

While Alternative 4 could reduce the intensity and frequency of some of the significant impacts it does not significantly reduce the fact that of daily year-round impacts to shorebirds including harassment which would still occur year-round.

Alternative 3 would not propose some of the reductions in protection in the HCP—the elimination of the East Boneyard and Exclosure 6 (DEIR at 9-14), it is essentially the same as the No Action Alternative because most of the exclosures have been kept in place year round due to other factors (staffing etc.) As noted above, a full closure of the nesting areas to motorized vehicle use, or even part of the area, would provide for meaningful avoidance and those alternatives should have been fully considered but were not.

Overall, the Alternatives considered provide insufficient avoidance of the significant impacts of the Project and very little range.

Response to Comment O4-23

The EIR considers four alternatives in detail as noted (see EIR Volume 1 section.9.2). The EIR also identifies alternatives that were considered and rejected by CDPR from further consideration (see EIR Volume 1 section 9.1). See Master Response 14: Discussion of Alternatives for information regarding the purpose of alternatives, range of alternatives, alternatives not considered or considered and rejected, and considered alternatives.

Alternatives discussed in the EIR are purposed to avoid or lessen significant effects caused by the proposed new project activities. Impacts related to ongoing park activities such as vehicle noise, vibrations and dust or existing impacts to natural resources are all part of baseline conditions and are not project impacts subject to environmental review or alternative analysis in this EIR. See Master Response 6: CEQA Baseline and Scope. The EIR concludes that with the AMMs and SPRs (EIR Volume 3 Appendix B) incorporated into the project and the mitigation measures identified for air quality (EIR Volume 1 section 5.5) all project impacts are less than significant.

**Comment O4-24**

*D. The EIR fails to Address how the Draft HCP undermines State Parks' Public Trust Obligation*

State Parks has a public trust obligation to protect waters and wildlife. Pursuant to statute (as well as common law) the waters and wildlife resources of the State of California are held in trust for the people of the State. (Fish & Game Code §711.7(a); see also Fish & Game Code § 1801 [it is "the policy of the state to encourage the preservation, conservation, and maintenance of wildlife resources under the jurisdiction and influence of the state"], *Ex Parte Maier* (1894) 103 Cal. 476, 483; *People v. Harbor Hut Rest.* (1983) 148 Cal. App. 3d 1151, 1154, *Betchart v. California State Dept. of Fish and Game* (1984) 158 Cal. App. 3d 1104, 1106.)

All state agencies are obliged to protect this public trust and the California Legislature has specifically required all state agencies, including State Parks, to "conserve, protect, restore and enhance" any endangered or threatened species and their habitat when undertaking any state action, such as issuance of a permit or adoption of a plan. (Fish & Game Code §§ 2052, 2055; *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 125.) State Parks, therefore, has an affirmative statutory public trust duty to ensure the conservation, preservation, recovery and enhancement of threatened, endangered, and candidate species and their habitats in developing and adopting an HCP.

The public trust doctrine "places on the state the responsibility to enforce the trust." (*Center for Biological Diversity, et al., v. FPL Group, Inc.* (2008) 166 Cal App. 4th 1349, 1368, 1361 ["[I]t is clear that the public trust doctrine encompasses the protection of undomesticated birds and wildlife. They are natural resources of inestimable value to the community as a whole. Their protection and preservation is a public interest."].) This duty carries with it the "implied power to do everything necessary to the execution and administration of the trust." (*People v. California Fish Co.* (1913) 166 Cal. 576, 597.) The Supreme Court has identified this substantive duty "to protect the people's common heritage," holding that an agency may surrender "that right of protection only in rare cases when the abandonment of that right is consistent with the purposes of the trust." (*Nat'l Audubon Soc'y v. Superior Court* (1983) 33 Cal.3d 419, 441.)

In developing the HCP State Parks should have ensured that it is meeting its public trust obligation to use "all necessary methods and procedures" to conserve, protect, restore and enhance listed species and to protect biologically sustainable populations of other species. (Fish & Game Code §§ 2052, 2055, 2061.)

Further, State Parks' consideration of impacts to public trust wildlife resources in the Recirculated Draft EIR must be informed by the Department of Fish and Wildlife and the Coastal Commission, which each have special responsibilities as trustees.

For example, as detailed above, the Coastal Commission determined that the entire Oceano Dunes SVRA is an Environmentally Sensitive Habitat Area (ESHA) (CCC.2021.) Because OHV use is not resource dependent (meaning it can occur outside of the coastal zone), it can only be authorized if that use is consistent with protection of the ESHA values. And the Commission has specifically addressed the need to end vehicle crossings of Arroyo Grande Creek to protect water and fish resources. Regardless of the status of any legal challenges to the Commissions orders, State Parks cannot lawfully adopt an HCP that destroys public trust resources in wildlife and water or that violates other California coastal protection laws, including protection of ESHA and other conservation of other coastal values.

The Department of Fish and Wildlife is responsible as the trustee for fish and wildlife resources. (Fish and Game Code § 1802.) As part of the CEQA review process, the Department discharges its public trust obligations through its role as a CEQA "trustee agency" and/or a "responsible agency" when permits or agreements from the Department are required. During CEQA review, the Department is required to "consult with lead and responsible agencies and shall provide, as available, the requisite biological expertise to review and comment upon environmental documents and impacts arising from project activities, as those terms are used in [CEQA]." (Fish and Game Code § 1802.) In the CEQA process the Department is charged with using its biological expertise to "focus on any shortcomings" in the environmental review. (14 Cal. Code Regs § 780). Thus, pursuant to statute, the Department is obligated to provide its requisite biological expertise to review and comment upon environmental documents and the significance of any impacts to state protected species and other wildlife resources arising from proposed project activities. State Parks must consider the Department's expertise regarding impacts to species and trust resources in the draft Recirculated HCP.

The Draft HCP should not be adopted based on the deficiencies identified in the Recirculated Draft EIR because it does not sufficiently protect public trust resources and State Parks has not ensured that it is meeting its public trust obligation to use "all necessary methods and procedures" to conserve, protect, restore and enhance listed species and to protect biologically sustainable populations of other species. (Fish & Game Code §§ 2052, 2055, 2061.)

Response to Comment O4-24

The comment makes broad claims about public trust violations but does not provide substantial evidence for CDPR consideration of how the EIR's analysis of impacts to public trust resources is inadequate. CDPR actively manages and protects resources under its care as a state trustee agency. See also Master Response 3: HCP with CDPR Mission and Mandates for information on accommodating recreation and conservation. See Master Response 6: CEQA Baseline and Scope.

Coastal Commission has reviewed the HCP and EIR and submitted comments. See Coastal Commission comment letter A1 and subsequent responses to Coastal Commission comment.

Also see Master Response 4: Consistency with Coastal Act regarding potential impacts on ESHA, and response to comment A2-10 regarding vehicle crossing of Arroyo Grande Creek.

CDFW has reviewed the HCP and EIR and submitted comments. See CDFW comment letter A2 and subsequent responses to CDFW comment.

CDPR is a State trustee agency for units of the State Park System and responsible for management, maintenance, administration, and operation of state vehicular recreation areas such as ODSVRA. (Pub. Res. Code § 5090.32 b)). The Off-Highway Motor Vehicle Recreation (OHMVR) Act of 2003 (PRC § 5090.01 et seq.) provides CDPR's mandate for administering the state's OHMVR Program to provide high quality OHV recreation opportunities and conservation of natural and cultural resources. See Master Response 3: HCP with CDPR Mission and Mandates for information on accommodating recreation and conservation.

**Comment O4-25**

IV. ENDANGERED SPECIES ACT COMPLIANCE

An HCP is supposed to be conservation plan. As noted, the ESA defines "conservation" to mean promoting the recovery of listed species. 16 U.S.C. 1532(3). Yet this HCP reduces existing conservation measures for SNPL and CLTE, including by allowing expanded vehicular use in areas currently protected by seasonal exclosures. It fails to qualify as a conservation plan under the ESA.

Section 10(a)(2)(A) of the ESA provides the standards the HCP applicant must meet, including information about impacts of proposed take, measures to minimize and mitigate impacts, and alternatives to reduce or minimize take:

No permit may be issued by the Secretary authorizing any taking referred to in paragraph (1)(B) unless the applicant therefore submits to the Secretary a conservation plan that specifies—

> (i) the impact which will likely result from such taking;
>
> (ii) what steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps;
>
> (iii) what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized; and
>
> (iv) such other measures that the Secretary may require as being necessary or appropriate for purposes of the plan.

16 U.S.C. 1539(a)(2)(A). The 2025 Draft HCP does not meet these criteria, as among other things, it (1) does not fully disclose the impacts that will result from the takings (and far underestimates the taking by ignoring harassment and the best available science as detailed above); (2) does not demonstrate that all feasible steps have been taken to minimize and mitigate the takings; and (3) does not evaluate feasible alternatives that would minimize or avoid the takings.

In addition, ESA section 10(a)(2)(b) requires the Secretary of the Interior to make specific findings if it approves in HCP:

> If the Secretary finds, after opportunity for public comment, with respect to a permit application and the related conservation plan that—
>
> (i) the taking will be incidental;

> (ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;
>
> (iii) the applicant will ensure that adequate funding for the plan will be provided;
>
> (iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
>
> (v) the measures, if any, required under subparagraph (A)(iv) will be met; and he has received such other assurances as he may require that the plan will be implemented, the Secretary shall issue the permit. The permit shall contain such terms and conditions as the Secretary deems necessary or appropriate to carry out the purposes of this paragraph, including, but not limited to, such reporting requirements as the Secretary deems necessary for determining whether such terms and conditions are being complied with.

In particular, as detailed above, the 2025 Draft HCP does not support the required findings that the applicant will minimize and mitigate the impacts of the proposed take to the maximum extent practicable – indeed the plan is designed to actually increase impacts to listed species and habitats rather than reduce them—and that the takings will not appreciably reduce the likelihood of the survival and recovery of the affected species in the wild.

In addition, ESA section 7(a)(2) provides that the USFWS may not approve the HCP if it is likely to result in the destruction or adverse modification of critical habitat. As discussed above, in addition to ongoing unpermitted impacts to critical habitat under, as noted above the 2025 Draft HCP proposal to open up "East Boneyard (approximately 47 acres) and incremental elimination of 6 Exclosure (62 acres) could result in the permanent loss of up to 109 acres of protected breeding habitat" which is also critical habitat. (2025 Draft HCP at 4-101.) Vegetation planting for dust control while important, also affects significant acreage within the SNPL critical habitat. The HCP will also result in destruction, adverse modification, and net loss of designated critical habitat for La Graciosa thistle. The 2025 Draft HCP would thus result in the destruction and adverse modification of critical habitat, with a net loss of such habitat. In this way as well, the proposed 2025 HCP fails to meet the requirements of the ESA.

Response to Comment O4-25

HCPs are required by FESA to be included in applications for ITPs. HCPs are intended to minimize incidental take authorized under an ITP. The main purpose of an HCP is not species recovery or delisting, but to ensure that the taking will not appreciably reduce the likelihood of survival and recovery of the species. An HCP is not a species recovery plan. The USFWS will evaluate the HCP to determine if all issuance criteria are met prior to approving the HCP or issuing an ITP. See Master Response 1: HCP Purpose and ITP Issuance Requirements for more information. Also see response to comment O4-14 above regarding minimizing the impact of take to the maximum extent practicable.

The USFWS is the regulatory authority under FESA Section 7 to assess impacts to SNPL and La Graciosa thistle critical habitat from all proposed ITP covered activities identified in the HCP. The EA for the Oceano Dunes District HCP concludes the impacts on critical habitat from all ITP covered activities, which includes the project activities evaluated in this EIR, would not be significant.

CDPR acknowledges the requirements for HCPs and for issuing an ITP, which are also laid out in HCP section 1.5.2 and in Master Response 1: HCP Purpose and ITP Issuance Requirements.

This comment does not explain how the HCP (1) does not fully disclose the impacts that will result from the takings; (2) does not demonstrate that all feasible steps have been taken to minimize and mitigate the takings; and (3) does not evaluate feasible alternatives that would minimize or avoid the takings. HCP Chapter 4 Potential Biological Effects/Take Assessment discloses impacts on covered species. HCP Chapter 5 Conservation Program demonstrates that feasible steps have been taken to minimize the mitigate taking in and HCP Chapter 8 Alternatives evaluates feasible alternatives. Also see response to comment O4-7 above regarding inclusion of harassment in incidental take.

**Comment O4-26**

IV. CONCLUSION

The 2025 draft HCP does not meet the standards for issuance of an ITP for the proposed covered activities that have the potential to impact federally listed species in a variety of ways and undermine recovery of listed at the Oceano Dunes. Rather than provide a comprehensive conservation plan that will improve the status of listed species affected by the covered activities, the 2025 draft HCP cynically proposes to increase the mortality of the covered species as the result of vehicular activities, reduce existing conservation and further fragment, degrade, and destroy critical habitat, breeding habitat, and other habitat. The 2025 draft HCP appears designed to undermine the recovery gains achieved in the past for the covered species rather than support survival and recovery into the future. For these reasons and many others stated above, the Service cannot approve the HCP or issue a ITP authorizing the take of any of the listed species as proposed in the HCP.

Response to Comment O4-26

The USFWS will ensure that the HCP meets all issuance criteria prior to approving the HCP or issuing an ITP. As stated in response to prior CBD comments, the HCP is not a recovery plan but the conservation program in the HCP area does contribute to species recovery, particularly for SNPL and CLTE. See Master Response 1: HCP Purpose and ITP Issuance Requirements for more information. The USFWS is the regulatory authority under FESA Section 7 to assess impacts to critical habitat from all proposed ITP covered activities identified in the HCP. The EA for the Oceano Dunes District HCP concludes the impacts on critical habitat from all ITP covered activities, which includes the project activities evaluated in this EIR, would not be significant. See Master Response 7: Reduction of Boneyard and 6 Exclosures (CA-50).

**Comment O4-27**

A. Baseline/environmental setting is unclear/misleading

Since at least 2001, the SVRA has documented ongoing nesting and, unfortunately, mortalities of snowy plovers and California least terns, including mortalities from proposed covered activities. The DEIR includes the mortalities from proposed covered activities as part of the baseline, however, baseline should not include ongoing illegal “take”.

The DEIR fails to analyze impacts from the current activities that have been ongoing for years to listed species, federally designated critical habitat and ESHA. Instead, the DEIR states “The majority of HCP covered activities presently occur in the HCP area and have been occurring for decades… The HCP does not propose changes to these existing activities; therefore, there are no new impacts associated with these existing covered activities; these activities do not change the environmental baseline and therefore are not further considered in this impact analysis. (DEIR at

pg.6-81 to 6-82). Just because an activity has been occurring for decades does not eliminate the need to analyze if the activities are causing impacts to species. In fact, the illegal ongoing documented mortalities of snowy plovers from CDPR-allowed activities was the incentive for our organization's 60-day notice letter to CDPR on July 19, 2017 for violations of the Endangered Species Act and unauthorized take of plovers. The DEIR and HCP need to analyze the "take" of species and avoid, minimize and if necessary mitigate the impacts from ongoing activities. While the CDPR is currently implementing numerous Avoidance and Minimization Measures (AMMs) for a variety of activities that impact species, the current activities allowed at the SVRA in particular are impacting listed species and federally designated critical habitat. No analysis of the impacts to federally designated critical habitat is provided, nor is mitigation for those impacts identified. In addition, unpermitted illegal "take" is occurring from ongoing activities.

While cause of mortalities can be challenging to determine, in 2019 the CDPR documented five adult snowy plover mortalities in the "open riding" area associated with "multiple tire tracks" (CDPR 2019, Table H.5 at pg. 131). Four of the mortalities occurred in August during the breeding season and one in November when the exclosures were not in place. In 2018, the CDPR documented eight adult snowy plover mortalities in the "open riding" area associated with "multiple tire tracks" and often "flattened" (CDPR 2018, Table H.3 at pg. 134-135). Three mortalities occurred in late September within the breeding season window, and five occurred in the non-breeding season when the exclosures were not in place. In 2017, the CDPR documented nine adult snowy plover mortalities in the "open riding" area associated with "tire tracks" and often "flattened" or noted as a "vehicle strike" (CDPR 2017, Table G.3 at pg. 146-147). Two mortalities occurred in early to mid-September within the breeding season window, and seven occurred in the non-breeding season when the exclosures were not in place. In 2016, the CDPR documented six adult snowy plover mortalities in the "open riding" area associated with "tire tracks" and often "flattened" or noted as a "blunt trauma" or "crushed" (CDPR 2016, Table G.4 at pg. 140). Two mortalities occurred in early to mid-March within the breeding season window, and four occurred in the non-breeding season when the exclosures were not in place. In the riding areas, a majority of the adult mortalities occur in the non-breeding season, yet no new AMMs are proposed to avoid or minimize "take" of resident snowy plovers during the nonbreeding season. New AMMs need to include permanent exclosures during the non-breeding season to provide safe areas for the resident snowy plovers to forage and loaf. Brindock and Colwell (2011) found clear habitat attributes (abundant food, wide beaches and limited obstructive cover) that supported year-round residents and migrants and calls for "protecting occupied sites from human disturbance, which adversely alters nonbreeding habitat and directly causes mortality".

Response to Comment O4-27

This comment is from CBD's comment letter submitted on the 2020 Draft HCP and 2020 Draft EIR that was incorporated into their 2025 comment letter by reference. Information presented has been considered by CDPR and incorporated into the 2025 HCP and EIR as appropriate.

Under CEQA, the project being evaluated solely comprises new proposed actions being considered by CDPR for approval (EIR Volume 1 section 2.4.2.2). CDPR has carefully evaluated the biological effects of the existing park operations in EIR Volume 3 Appendix D to acknowledge existing impacts and include them as part of the environmental setting in EIR Volume 1 section 6.2.7. See Master Response 6: CEQA Baseline and Scope for more information.

SNPL and CLTE mortalities identified as part of the environmental setting are from existing park operation activities. The impact of all HCP covered activities potentially causing take and requiring an ITP has been evaluated by the USFWS in an Environmental Assessment under the National environmental Policy Act (NEPA).

Contrary to the comment, HCP Table 4-1 does not indicate that more mortalities and injuries occurred in the non-breeding season from 2001-2024; rather, it instead shows that mortalities were about equal (31 in the breeding season and 33 in the non-breeding season), and injuries were higher in the breeding season (18 versus 1 in the non-breeding season). Note that the 2017 report shows 6 of the mortalities, not 9 as stated in the comment, were carcasses characterized as flattened or associated with tire tracks.

The EIR addresses potential impacts from new actions on critical habitat and potential ESHA (see, e.g., EIR Volume 1 sections 6.3.2.1 and 6.3.3). The analysis includes implementation of AMMs, which are incorporated into the HCP's conservation program. The EIR concludes the impacts of new actions on designated critical habitat and ESHA would be less than significant; no mitigation is required. Effects of ongoing park operations on sensitive habitats, including critical habitat and ESHA, are described in EIR Volume 3 Appendix D (see Sensitive Natural Communities) but are not new impacts, as noted previously. The comment does not provide any substantial evidence for CDPR consideration of how the analysis of impacts to critical habitat or ESHA is inadequate. The USFWS is the regulatory authority under FESA Section 7 to assess impacts to critical habitat from all proposed ITP covered activities identified in the HCP. The EA for the Oceano Dunes District HCP concludes the impacts on critical habitat from all ITP covered activities, which includes the project activities evaluated in this EIR, would not be significant. See Master Response 7: Reduction of Boneyard and 6 Exclosures (CA-50).

The EIR describes the potential for impacts from new actions on listed species, including impacts that could be considered take under FESA or CESA (see, e.g., EIR Volume 1 section 6.3.2.1). The analysis describes potential effects during both the breeding and non-breeding seasons and includes potential impacts from motorized recreation. The analysis takes into account AMMs, which are incorporated into the HCP's conservation program and include numerous measures implemented in the non-breeding season. The EIR concludes the impacts of new actions on listed species would be less than significant; no mitigation is required. Effects of ongoing park operations on listed species, including SNPL mortalities, are described in EIR Volume 3 Appendix D but are not new impacts, as noted previously. The comment does not provide substantial evidence for CDPR consideration of how the EIR analysis of impacts to listed species is inadequate.

CDPR considered implementation of permanent year-round exclosures (see EIR Volume 1 Alternative 3) but rejected it in favor of the project as proposed (see EIR Volume 1 section 9.2.3.3). See Master Response 14: Discussion of Alternatives for more information. Note that Brindock and Colwell (2011) was considered in the HCP analysis.

**Comment O4-28**

State Parks has the discretion to use the current environmental setting during the COVID-19 closure as the baseline. Oceano Dunes SVRA has been closed to vehicular traffic since May 1, 2020 and remains closed to date due to the Covid-19 crisis, allowing wildlife to utilize suitable habitat with far less human disturbance. This provides a rare opportunity to evaluate how the covered species under the HCP use the habitat absent impacts from vehicles, including crossing Arroyo Grande Creek, vehicles camping on the beach, and off-road vehicle activity on the beach

and in the dunes. Center staff documented some of the current environmental conditions on May 15 and 25, 2020 and the report from those visits we include as an Attachment to these comments. The report documents active use by snowy plovers – both adults and chicks - outside of the exclosure areas between milepost 4 and 6.

Response to Comment O4-28

This comment is from CBD's comment letter submitted on the 2020 Draft HCP and 2020 Draft EIR that was incorporated into their 2025 comment letter by reference.

As Lead Agency, CDPR is required to establish a baseline for determining the significance of project impacts. CDPR has determined an environmental baseline reflective of normal park operating conditions is the appropriate baseline for assessing project impacts. See Master Response 6: CEQA Baseline and Scope for more information.

Since the comment was submitted, the HCP area has been fully reopened for public recreation, although the seasonal exclosures have been temporarily operated year-round in response to non-Covid factors.

**Comment O4-29**

The report also documents a "hazing" technique using mylar flagging to discourage snowy plovers and other birds from using these areas for nesting. This "hazing" technique is considered "take" under the federal Endangered Species Act, under which "take" of a species includes to "harass, harm, pursue, hunt, shoot, wound kill, trap, capture, or collect, or to attempt to engage in any conduct" (16 U.S.C. § 1532(19), and is therefore currently illegal. In addition, we received from CDPR (n.d.), Protocols to protect western snowy plover and California least tern during 2020 Oceano Dunes State Vehicular Area park reopening (attached) that states "Scrapes found are scuffed out and marked with pin flags." (at pg. 1). Because scrapes are excavated by male snowy plovers to attract female mates, "scuffing" out these structures interferes with mating activities and is a form of harassment and "take" under the ESA. Only AMM 40 addresses hazing and it only addresses hazing of predators, not listed species. If CDPR anticipates that hazing techniques would continue to be used on listed proposed covered species, "take" coverage needs to be sought by including all "hazing" activities as covered activities under the HCP. This issue must be addressed in a revised Draft HCP, and because it is not addressed in the DEIR it is inadequate.

Response to Comment O4-29

This comment is from CBD's comment letter submitted on the 2020 Draft HCP and 2020 Draft EIR that was incorporated into their 2025 comment letter by reference.

This comment refers to activities from 2020 that have ceased.

The HCP does not include mylar flagging, scuffing out scrapes, or other activities designed to discourage SNPL or CLTE nesting as a covered activity, and it is not proposed for authorization under an ITP. These activities thus do not need to be included or evaluated in the EIR.

**Comment O4-30**

B. Project description is unclear, unstable and segmented

State Parks has indicated that in addition to the activities it seeks authorization for under the HCP now, it may propose activities contemplated in the Public Works Plan (PWP) which is currently

undergoing public input. The HCP (at 2-41 to 2-42) identifies that "CDPR is currently evaluating including the following projects in the PWP:

- Converting all or a portion of the 120-acre agricultural lease area near Oso Flaco to a campground and/or day use area
- Developing public motorized and/or non-motorized access into the southern area of the SVRA via the new campground and/or day use site
- Facility improvements at the parks' corporation yard
- Oceano Campground infrastructure improvements
- North Beach Campground facility improvements
- Changes at the Grand Avenue and Pier Avenue entrance areas, including lifeguard tower and kiosk improvements and assessing changes to use of those entrances
- Adding visitor-serving amenities at the butterfly grove
- Developing an accessible public access boardwalk along the foredunes between Grand and Pier avenues
- Operational changes that could alter the areas that are open to OHV recreation within the covered areas.
- Riding in 40 Acres

The "Riding in 40 acres" is already included as a covered activity in the HCP, but the remaining PWP projects that would result in "take" of species covered under the HCP are contemplated to require amending into the HCP in the future. The HCP (at pg. 2-42) states:

> As individual PWP projects are brought forward for implementation, they will be assessed for incorporation into the HCP via amendment. Some of the smaller PWP projects could possibly be incorporated into the HCP as special projects (CA-49; section 2.2.5.9) and not require an amendment.

This approach would unlawfully segment the CEQA review of the HCP project as a whole. State Parks must address all impacts of the proposed project now, including aspects of the proposed PWP that affect covered species, it cannot segment that review.

Response to Comment O4-30

This comment is from CBD's comment letter submitted on the 2020 Draft HCP and 2020 Draft EIR that was incorporated into their 2025 comment letter by reference.

The PWP is currently on hold, as described in Section 2.2.7 of the HCP. See Master Response 5: Public Works Plan for more information.

**Comment O4-31**

C. Draft EIR does not adequately consider protection of coastal resources

1. Coastal Resources

The coastal strand ecosystem is unique and fragile. Much of this ecosystem in central and southern California has been significantly altered by development, converted to accommodate recreational uses and invaded by non-native plants.

The ecosystem is characterized by strong desiccating winds, fog, salt spray, intense solar radiation, a relatively infertile and unstable substrate (sand) and typically droughty conditions. This ecosystem extends from the high tide zone inward in a narrow band and gives way to dune ecosystems that share many of the intense weather features. Many of the plants in these ecosystems have adapted to shifting sands, with stems that lay prostrate over the sand, or leaves that curve downward and lay flat along the sand. Some leaves have sticky or hairy surfaces, which gather sand grains to act as ballast, holding them down during high winds. Many of these plants reproduce and spread by rhizomes. Salt spray, slow nutrient cycling and drying winds contribute to a desert-like environment despite being directly adjacent to the Pacific Ocean.

While the HCP considers the 40-acre riding area as a covered activity where it states "Riding in 40 Acres is already included as a covered activity (CA-42; section 2.2.5.2) (at pg. 2-42), the DEIR identifies the 40-acre riding area as a "Potential Future Covered Activity (DEIR at Figure 5-5). Not only does the 40-acre riding area cover part of the current Boneyard Exclosure area, it is also directly adjacent to Oso Flaco Lake. No analysis of impacts of this activity is provided although the whole area is within ESHA, and much of it is within designated critical habitat for the La Graciosa thistle and the current seasonal protections of the Boneyard Exclosure. In addition the impact analysis must also include direct and indirect impacts to tidewater goby critical habitat at Oso Flaco Lake. The DEIR must analyze the impacts of all covered activities.

Response to Comment O4-31

This comment is from CBD's comment letter submitted on the 2020 Draft HCP and 2020 Draft EIR that was incorporated into their 2025 comment letter by reference.

Because CA-42 is a reasonably foreseeable future activity, its effects are considered in cumulative impacts (see, e.g., EIR Volume 1 section 6.4.2). The cumulative analysis considered the effects of developing a two-mile trail system with a turnaround that could remove up to 5 acres of vegetation in the silver bush lupine mock heather dune scrub vegetation alliance (EIR Volume 1 p. 6-147). CDPR recognizes that this area may be considered ESHA by Coastal Commission. See response to Coastal Commission Comment A1-4. The EIR concludes that, given the implementation of CDPR's standard practices, impacts on sensitive natural communities from the proposed new HCP activities (which include implementation of AMMs), even when combined with future HCP covered activities, would remain less than significant. See Master Response 13: Limited Trail Riding for more information.

EIR Volume 1 section 4.6.1.6 determines that CA-42 would not impact tidewater goby. Critical habitat for tidewater goby is designated within the HCP area near Oso Flaco Lake, but CA-42 occurs outside of that critical habitat. The USFWS is the regulatory authority under FESA Section 7 to assess impacts to critical habitat from all proposed ITP covered activities identified in the HCP. The EA for the Oceano Dunes District HCP concludes the impacts on critical habitat from all ITP covered activities, which includes the project activities evaluated in this EIR, would not be significant. See Master Response 7: Reduction of Boneyard and 6 Exclosures (CA-50).

The EIR is not required to analyze all covered activities identified in the HCP as proposed project activities. The HCP includes as covered activities potential future activities that CDPR may propose for implementation during the HCP's term to ensure these projects would have take coverage. Including these activities in the HCP is not a commitment of CDPR to pursue them and does not grant such activities entitlements or obviate the need for future environmental review for compliance with CEQA. These activities are suitable for consideration in cumulative

impacts but need not be evaluated as a project effect until they are actually proposed. See also response to comment O4-27 regarding new proposed actions.

**Comment O4-32**

2. Wetlands

Wetlands are rare and unique features that provide habitat for some of the proposed covered species, including the California red-legged frog, tidewater goby, and some of the rare plants, among other rare species. As part of the current activities, CDPR and the SVRA utilize numerous pesticides and herbicides primarily in order to control invasive species. Some of the products are toxic to covered species as well as non-covered but sensitive species and/or their pollinators. For this reason, the DEIR needs to clearly put in place pesticide use mitigation measures which safeguard the non-target plants and animals that are covered species or other rare species and pollinators, for the following proposed pesticide uses:

Aminocyclopyrachlor

Aminocyclopyrachlor (ACP) is extremely harmful to plants, particularly dicots. EPA found that if used according to the label, nearby, non-target plants could be exposed to as much as 18,000 times the level of ACP known to cause harm. The EPA's risk level of concern (a comparison of the estimated exposure concentration and the concentration known to cause harm) was exceeded by 3,600 and 18,200 for ESA-listed dicot plants for ground and aerial non-crop applications, respectively, and by 37 and 189 for non-listed dicot plants for ground and aerial non-crop applications, respectively. And that is just when measuring how spray drift only will affect the vegetative vigor of plants. When modelling how the combination of spray drift and runoff could impact seedling emergence, EPA found that both listed and non-listed dicots could be exposed to nearly 300 times the concentration known to cause harm. Harm to listed and non-listed dicot plants from ACP spray drift was found to occur at distances greater than 1,000 feet from ground applications – even when modelled at a reduced application rate – and greater than 2,600 feet from aerial applications. As such, the EPA has stated that the use of ACP may affect any ESA-listed species of plant and animal if its use overlaps with a species' range.

This estimated harm from the EPA-approved, labelled uses of ACP is significant and clearly explains why there have been many extremely adverse incidents associated with its use. When ACP first came on the market ten years ago, its maker was besieged by at least 30,000 claims from homeowners, golf courses, municipalities and landscapers that the herbicide damaged nontarget trees. It is estimated that hundreds of thousands of trees were killed or damaged by ACP in the first two years of its use. More recently in Oregon, all formulations containing ACP are now highly restricted in the state following years of damage to 2,000 ponderosa pines in the state. Environmental sampling found the presence of ACP in dead and dying trees 6 years since the last nearby application was made. An investigation by the Oregon Department of Agriculture found that all ACP applications were made according to the EPA-approved label. In addition to harm to trees and other plants, EPA also found significant weight reduction in

birds exposed to ACP for short periods of time and the agency did not have enough data to sufficiently analyze chronic risk to birds from ACP exposure. Therefore, birds appear to be at risk of acute harm due to ACP exposure and there is not enough information to indicate that chronic, long-term exposures are safe.

Clethodim

Clethodim poses a risk to many non-target organisms, including freshwater fish and amphibians, for every single approved use of the pesticide. Mammals are also estimated to experience chronic harms from many uses of clethodim. Terrestrial plants, particularly monocots are expected to experience reduced seedling emergence more than 1,000 ft away from the treated area and experience growth impairment nearly 500 ft from the treated area.

Glyphosate

A recent EPA analysis found multiple environmental harms from glyphosate use. Use of glyphosate in accordance with the label was found to: 1) Result in concentrations that can potentially impact the survival and biomass of aquatic plants, upland plants, and riparian/wetland plants. 2) Result in residues on foliage that can potentially impact the growth of herbivorous birds, reptiles and terrestrial amphibians. 3) Potentially impact the growth and reproduction of terrestrial mammals following ground applications of glyphosate. This analysis also indicated that considerable no-spray buffers would be needed to keep offtarget plants from being harmed by glyphosate use, more than 1,000 feet for certain aerial applications and nearly 400 feet for certain ground applications. The states of California and Arkansas both have mandatory no-spray buffers of 500 feet for aerial applications. Ecological incident data also reinforce the finding that the current labelled uses of glyphosate are having devastating effects to plant and animal life outside of the sprayed field. Approximately 600 incidents have been reported and logged on the Ecological Incident Information System (EIIS) and Avian Monitoring Information System (AIMS) databases. A separate Incident Data System (IDS) database has identified 269 separate aggregate incident reports. Ecological incidents are also significantly underreported for pesticides so this should be viewed as the absolute bare minimum of ecological incidents that involve glyphosate. The EPA has found that glyphosate poses a risk to a federally listed amphibian, the California red-legged frog, making a Likely to Adversely Affect determination for the species. Some glyphosate formulations and co-formulants have been found to be “highly toxic” to certain species of fish. Researchers have found negative associations between glyphosate use and monarch butterfly population size. Use of glyphosate has been tied to widespread declines of milkweed, which is essential to monarch butterfly survival. The World Health Organization’s International Agency for Research on Cancer (“IARC”) conducted an exhaustive review of the publicly available scientific literature in 2015 and concluded that glyphosate is “probably carcinogenic to humans” (Group 2A). IARC carefully weighed evidence in three areas, and found that: 1) There was sufficient evidence to conclude that glyphosate causes cancer in animal studies; 2) There was limited evidence that exposure to glyphosate causes cancer (non-Hodgkin lymphoma) in humans; and 3) There was strong evidence that glyphosate can damage DNA and induce oxidative stress, two well characterized pathways that can lead to cancer. IARC’s finding that glyphosate causes cancer in animals prompted California’s Office of Environmental Health Hazard Assessment to list glyphosate as a known carcinogen under California’s Proposition 65 law. The agency has also finalized a No Significant Risk Level for glyphosate, which estimated the daily exposure level that will result in a 1/100,000 chance of developing cancer, of 1.1 mg/day.

Triclopyr

EPA has found that range, pastureland, and rights-of-way uses of triclopyr can expose birds, reptiles and terrestrial amphibians to levels of the herbicide that cause reduced survival of offspring. The same uses can expose mammals to 37 times the amount of triclopyr known to

reduced litter size. All labelled uses of triclopyr were found to expose adult and larval bees to levels estimated to reduce survival and larval emergence. Harm to bee larva was estimated more than 1,000 feet from the application site. Terrestrial plants were also estimated to be exposed to levels of triclopyr that were known to cause harm more than 1,000 feet away from the site of application, even for ground applications. Triclopyr butoxyethyl ester (BEE) is classified as "highly toxic" to aquatic organisms. Range, pastureland and meadow uses of BEE can expose fish and aquatic invertebrates to levels of the pesticide known to cause acute harm. The EPA has found that triclopyr poses a risk to a federally listed amphibian, the California red-legged frog, making a Likely to Adversely Affect determination for the species.

Fluazifop-P-Butyl

One other pesticide, Fluazifop-P-Butyl, not used in wetlands, according to the pesticide label, can expose mammals to concentrations that are known to cause reduced pup viability and pup weight. Fluazifop can also cause chronic harm to bee larva following every use of the pesticide that was modelled by EPA. Terrestrial plants can be exposed to levels of fluazifop via spray drift that can cause harm, anywhere from 100 to 1,000 ft from the treated area. We urge the CDPR to safeguard the resources of the park from the use of this pesticide.

Response to Comment O4-32

This comment is from CBD's comment letter submitted on the 2020 Draft HCP and 2020 Draft EIR that was incorporated into their 2025 comment letter by reference. Information presented has been considered by CDPR and incorporated into the 2025 HCP and EIR as appropriate.

The comment presents pesticide impact information without tying it to CDPR practice specifically in the HCP area or to the adequacy of the EIR analysis.

Pesticide use in the HCP area is part of existing park operations. As stated in EIR Volume 1 section 3.1 (Analytical Methodology), it is not in the scope of the EIR to analyze impacts from existing operations. CEQA requires analysis of new activities resulting in a physical change to the environment. No changes are proposed to the existing pesticide/herbicide program used by CDPR in the HCP Area as documented in the HCP. See response to comment O4-27 and Master Response 6: CEQA Baseline and Scope.

The pesticide program is described in the HCP as covered activity CA-51 (HCP section 2.2.5.11). A detailed description of these pesticides and their toxicity are presented in HCP Appendix G. The potential effect of these pesticides on each of the covered species is described in the HCP in the discussion of CA-51. CDPR employs safeguards identified in AMMs listed for pesticide use (CA-51) in HCP Tables 5-2 through 5-8 to protect non-target species. CDPR also follows regulations from the California Department of Pesticide Regulations.

Under CEQA, mitigation measures must be for the purpose of reducing identified significant effects of the proposed action being evaluated as the CEQA project. The CDPR proposed actions (CA-12b, CA-13, CA-14, CA-16, CA-17, CA-21, CA-50, CA-52) do not involve pesticide use or change park operations regarding pesticide use. As such, there are no project impacts related to pesticide use and no mitigation for pesticide impacts is required.

**Comment O4-33**

3. ESHA

All of Oceano Dunes SVRA is defined as an Environmentally Sensitive Habitat Area (ESHA) by the Coastal Commission and ESHA must be protected. (Pub. Res. Code § 30240; *Bolsa Chica*

*Land Trust v. Superior Court* (1999) 71 Cal. App. 4th 493, 507-508.) As the California Supreme Court recently explained:

> ESHA, however, are "rare or especially valuable" habitat areas in the coastal zone, given enhanced protection by the Coastal Act. ([Pub. Res. Code § 30107.5.) They must be "protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas." ([Id.] § 30240, subd. (a).)

(*Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal. 2 Cal. 5th 918, 936.) The Supreme Court held that the City's CEQA review in that case "fell short by failing to account for the Coastal Act's ESHA protections" and "also ignored the practical reality that the project must ultimately pass muster under the Coastal Act." (Id. at 941-42.)

State Parks' Draft EIR falls short in its evaluation of ESHA—trying to devalue the current habitat in an attempt to ignore impacts to this critical resource. For example, regarding the new proposal for mechanical trash removal the DEIR states:

> General Facilities Maintenance – Mechanical Trash Removal (CA-21).
>
> Mechanical trash removal is proposed to occur within unvegetated areas along the shoreline and margin of the foredunes, above the wrack line (i.e., outside of the intertidal zone). Mechanical trash removal would also avoid all live vegetation and aquatic areas. As a result, mechanical trash removal is only expected toimpact bare, open sand areas. However, mechanical trash removal may occur within SNPL critical habitat (as described above in EIR section 6.3.2.1) and La Graciosa thistle critical habitat as well as ESHA defined by the CCC. Critical habitat and ESHA are considered to be sensitive habitat. Mechanical trash removal could temporarily remove favorable constituents within SNPL and La Graciosa thistle critical habitat as well as ESHA by altering dune composition and topography. Specifically, mechanical trash removal could reduce organic surface materials (e.g., driftwood) and microtopography. Most mechanical trash removal would be conducted to remove litter in areas where recreation activities have been concentrated. These areas have always supported an ongoing high level of recreation (i.e., presence of humans, pets, vehicles, and/or human attracted predators) [FN omitted] and, therefore, critical habitat and ESHA in this area has a reduced value. In addition, mechanical trash removal may improve the habitat by removing trash from the area. As a result, impacts to sensitive natural communities would be *less than significant*.

DEIR at 6-109

The DEIR's impact analysis is fatally flawed for several reasons. First, the DEIR relies on an artificial time frame to conclude that "these areas have always supported an ongoing high level of recreation and therefore, critical habitat and ESHA in this area has a reduced value." Actually, these areas have not always supported high levels of recreation. The first General Development Plan that included Oceano Dunes SVRA was approved in 1975 and codified the casual recreation use that had been occurring up to that time. While the DEIR states that 2 million people visit the SVRA annually (at pg. 2-4), we were unable to find substantiating data or information that supports the statement that the areas have *always* supported high levels of recreation in the SVRA over time in either the DEIR or the HCP, although it is likely it has increased over time. One alternative that CDPR needs to consider in the DEIR and HCP is decreasing the annual visitation in order to decrease the level of recreation that reduces the value of critical habitat and ESHA.

Upon listing and establishment of critical habitat for the Western snowy plover – Pacific DPS, the USFWS recognized the importance of the coastal strand area within the boundaries of the Oceano Dunes SVRA in sustaining and recovering the species. The DEIR recognizes "Critical habitat may also include an area that is not currently occupied by the species but that will be needed for its recovery." (at pg. 6-35). While many of the current avoidance and minimization measures aim at protecting the snowy plover (and California least tern), neither the DEIR or HCP analyze State Park's ongoing impacts from current activities, much less proposed and future activities, to federally designated critical habitat. It also does not analyze impacts to ESHA from current activities. Absent the impact analysis, the DEIR fails to provide mitigation for impacts to critical habitat or ESHA.

Response to Comment O4-33

This comment is from CBD's comment letter submitted on the 2020 Draft HCP and 2020 Draft EIR that was incorporated into their 2025 comment letter by reference.

The EIR acknowledges ESHA occurs in the HCP area; ESHA is further addressed in response to Coastal Commission Comment A1-4; Master Response 4: Consistency with Coastal Act; Master Response 12: Mechanical Trash Removal; Master Response 8: Dust Control Program (CA-44); and Master Response 7: Reduction of Boneyard and 6 Exclosures (CA-50).

A high level of recreation has occurred historically and is substantiated by numerous CDPR records and other sources. See Master Response 6: CEQA Baseline and Scope, and EIR Volume 1 section 8.2.

Effects of ongoing park operations on sensitive habitats, including critical habitat and ESHA, are part of the environmental baseline described in EIR Volume 3 Appendix D (see Sensitive Natural Communities), but are not new impacts. See Master Response 6: CEQA Baseline and Scope for more information.

The EIR addresses potential impacts from new actions on critical habitat and potential ESHA (see, e.g., EIR Volume 1 sections 6.3.2.1 and 6.3.3). The analysis includes implementation of AMMs, which are incorporated into the HCP's conservation program. The EIR concludes the impacts of new actions on designated critical habitat and ESHA would be less than significant; no mitigation is required.

The USFWS is the regulatory authority under FESA Section 7 to assess impacts to SNPL and La Graciosa thistle critical habitat from all proposed ITP covered activities identified in the HCP. The EA for the Oceano Dunes District HCP concludes the impacts on critical habitat from all ITP covered activities, which includes the project activities evaluated in this EIR, would not be significant. See Master Response 7: Reduction of Boneyard and 6 Exclosures (CA-50).

**Comment O4-34**

4. Trash/Beach Grooming

Because trash is an ongoing problem that attracts and subsidizes predators which can increase predation pressures on sensitive species covered under the HCP, the DEIR needs to identify and analyze a suite of trash reduction initiatives, including proactive education and penalizing actions for improper trash storage and dumping. Handing out trash bags and providing dumpsters has not been successful to date to prevent trash impacts. During prior visits to the SVRA, we noted that the dumpsters provided for trash disposal were uncovered and trash was blowing out of them and getting partially caught in the surrounding fencing. A full "Trash Free Beach" Initiative should

be analyzed and implemented in order to increase the health and aesthetics of the beach and decrease impacts to the covered species and ESHA, instead of mechanical trash removal.

As the DEIR notes (at pg. 5-22) beach grooming is well documented to destroy the coastal strand habitat. Dugan and Hubbard (2010) found the following:

> unvegetated dry sand zones were four times wider, macrophyte wrack cover was >9 times lower, and native plant abundance and richness were 15 and >3 times lower, respectively, compared to ungroomed beaches. Experimental comparisons of native plant performance were consistent with our survey results: On groomed beaches, although initial germination was similar, seed bank, survival, and reproduction were significantly lower in groomed compared to ungroomed plots.

The DEIR tries to justify the additional impact of beach grooming (mechanical trash removal) as not significant because the grooming would only occur in areas already heavily impacted by vehicles and maintenance activities. Federally designated critical habitat for snowy plovers also occurs within the areas proposed for grooming, yet the impact to critical habitat is not analyzed in the DEIR.

Dugan and Hubbard (2010) found that beach grooming will further exacerbate the conversion of coastal strand habitat to readily emissive sand:

> "Rates of aeolian sand transport were significantly higher in groomed plots, while native plants or wrack placed in that zone reduced sand transport. Our results suggest beach grooming has contributed to widespread conversion of coastal strand ecosystems to unvegetated sand."

Because the SVRA is already out of compliance with air quality standards and burdening the adjacent communities with hazardous air quality due to blowing sand, State Parks seems negligent at best to propose additional disturbance that will exacerbate air pollution. The State Park's own studies documented that "approximately 22 percent of the material collected was trash (e.g., paper, plastic debris, glass, etc.) and the remaining 78 percent of the material was organic (e.g., wood and charcoal) or rock (DEIR at pg. 5-22). The analysis concludes that "removal of such items from the surface of the sand at Oceano Dunes SVRA could, in turn, increase emissivity in portions of the SVRA that have been raked" (Ibid). While the DEIR tries to downplay the increased emissivity by stating that the emissivity would not occur "at the same rates observed by Dugan and Hubbard, since conditions at Oceano Dunes SVRA are regularly disturbed, free of vegetation, and not seeded to artificially high vegetation rates" (Ibid), it fails to provide data on the actual anticipated increase in emissivity from the proposed action. The proposed action also does not align with State Park's Beach Grooming Policy (0311.4.2.1), which requires "limit[ing] the amount or type of grooming used to that necessary for public health and safety, while allowing natural physical and biological uses of beach wrack to continue.(DEIR at pg. 4-4). Based on that Policy, no beach grooming should be proposed in order to protect public health, which is already suffering air pollution from current existing activities on the SVRA.

Response to Comment O4-34

This comment is from CBD's comment letter submitted on the 2020 Draft HCP and 2020 Draft EIR that was incorporated into their 2025 comment letter by reference.

CDPR currently implements a trash control program. See Master Response 12: Mechanical Trash Removal (CA-21) regarding dumpsters and the existing trash control program within the HCP area.

The analysis in the 2025 Recirculated Draft EIR was updated with more recent data, and the EIR no longer references the 2010 study by Dugan and Hubbard. Based on the results of a 2024 study (DRI 2024), EIR Volume 1 section 5.3.1 concludes that the mechanical beach raking activities proposed under CA-21 would not have the potential to substantially increase surface emissivity or generate excess dust, in areas already exposed to OHV activity, in a manner that adversely affects ambient air quality and causes or contributes to existing or projected violations of the NAAQS and/or CAAQS.The impact to SNPL critical habitat from mechanical trash removal is addressed in EIR Volume 1 section 6.3.2.1. With incorporation of AMMs, potential impacts on SNPL critical habitat were found to be less than significant. No mitigation is required. The USFWS is the regulatory authority under FESA Section 7 to assess impacts to critical habitat from all proposed ITP covered activities identified in the HCP. The EA for the Oceano Dunes District HCP concludes the impacts on critical habitat from all ITP covered activities, which includes the project activities evaluated in this EIR, would not be significant. See Master Response 7: Reduction of Boneyard and 6 Exclosures (CA-50).

**Comment O4-35**

D. DEIR and HCP Fail to Justify Exclosure 6 or Boneyard Reductions or Adequately Mitigate Impacts

The DEIR fails to adequately justify the proposal to reduce the existing breeding exclosures for snowy plovers and California least terns, including Exclosure 6 and over half of the Boneyard exclosure. For snowy plovers, the HCP identifies CDPR's management target of 155 breeding adults averaged over a moving three-year period (HCP at 5-2). The 155 breeding adults represents 44% of the 350 breeding adults identified for the Pismo Beach/Nipomo Dunes complex (CA-83) Recovery Goal in USFWS' Recovery Plan (2007). CA-83 is part of the larger Recovery Unit 5 that include San Luis Obispo, Santa Barbara and Ventura Counties. Unfortunately, Recovery Unit 5 is still not reaching the USFWS' recovery goal of 1,200 breeding pairs. In 2019, Recovery Unit 5 declined to only 807 breeding pairs – the lowest number of breeding pairs in the last six years (USFWS 2019). Because the HCP area is one of the largest breeding population sites within Recovery Unit 5, it is biologically indefensible to reduce conservation through reductions in breeding exclosures when the listed population and the Recovery Unit are falling well short of recovery goals and over the short term appear to be in decline.

The DEIR proposes reductions to the protective breeding exclosures as follows:

> Reduction of the Boneyard Exclosure and 6 Exclosure (CA-50). The East Boneyard Exclosure and 6 Exclosure reduction would open new areas to motorized vehicle and pedestrian recreation during the SNPL and CLTE breeding season. Most of these areas consist of bare sand and any exposed native vegetation would continue to be protected with fencing. The East Boneyard Exclosure and 6 Exclosure are removed during the winter each year and open to motorized recreation where visitors can drive through ESHA, SNPL critical habitat, and La Graciosa thistle critical habitat. Therefore, no changes to the existing impacts on sensitive natural communities would be expected and impacts would be *less than significant*.

DEIR at 6-109 to 110

Map 11a documents that Breeding Exclosure 6 is a highly utilized breeding area for snowy plovers, perhaps the most used area within the HCP area. Map 13a documents that Breeding Exclosure 6 is also a highly utilized breeding area for California least terns. The HCP and DEIR fail to provide justification or analysis as to why the highly desirable and successful Breeding Exclosure 6 would be preferentially chosen to be reduced. Neither the HCP or the EIR analyze the need to open new areas to motorized vehicles and pedestrian recreation during the threatened and endangered birds' breeding season, much less why Breeding Exclosure 6 is the preferred area to be reduced. The documents also fail to address any mitigation to offset the reduction in protected breeding habitat, or to mitigate impacts to ESHA and federally designated critical habitats.

The HCP describes the Boneyard exclosure reduction as follows: "the OHMVR Division proposes to no longer fence off the East Boneyard Exclosure (approximately 47 to 49 acres depending on dune topography) starting with the first breeding season under the HCP." The HCP never clearly states why this area is needed for "additional opportunity for year-round recreation". The proposed 40-acre riding area (which may or may not be a covered activity under the HCP – see discussion above) overlays part of the current Boneyard exclosure and critical habitat for La Graciosa thistle. The elimination of part of the Boneyard exclosure appears to be based solely on the fact that no California least terns have nested there since 2005 and only seven snowy plover nests have been established there during monitoring. Yet, the purpose and need for the 40-acre riding area are not identified and the 40-acre riding area is not analyzed for impacts in the DEIR, including impacts to La Graciosa thistle critical habitat. The 40-acre riding area is also directly adjacent to Oso Flaco lake and may directly or indirectly impact the proposed covered species (and other species) that rely on the Oso Flaco lake ecosystem, but the DEIR fails to analyze those potential impacts.

Response to Comment O4-35

This comment is from CBD's comment letter submitted on the 2020 Draft HCP and 2020 Draft EIR that was incorporated into their 2025 comment letter by reference. Note that the conservation target for SNPL was increased from 155 to 180 breeding adults in the 2025 Recirculated HCP (HCP section 5.2.1).

CDPR states its purpose in proposing the project activities in EIR Volume 1 section 2.3.2 Project Objectives. CDPR is responsible for managing both natural resources and public recreation. See Master Response 3: HCP with CDPR Mission and Mandates for information on accommodating recreation and conservation. CDPR proposes the reduction of the Boneyard Exclosure and 6 Exclosure (CA-50) if HCP conservation targets can be met to meet the objectives of operating the park consistent with the SVRA park unit designation, which includes expanding and maximizing, as appropriate, recreational opportunities (EIR Volume 1 section 2.4.2.2; Reduction of the Boneyard Exclosure and 6 Exclosure [CA-50], p.2-16). See Master Response 7: Reduction in Boneyard and 6 Exclosures (CA-50) regarding the rational for proposing the seasonal exclosure reduction, criteria for the reduction, and a summary of potential impacts.

The evaluation required as part of the EIR is whether the impacts would be significant. The EIR determines that the impacts would be less than significant. Mitigation is not required to offset the reduction in protected breeding habitat, or to mitigate impacts to ESHA and federally designated critical habitats. The USFWS is the regulatory authority under FESA Section 7 to assess impacts

to critical habitat from all proposed ITP covered activities identified in the HCP. See response to comment O4-2. See Master Response 7: Reduction of Boneyard and 6 Exclosures (CA-50).

Limited Trail Riding (CA-42) is analyzed in the EIR as a reasonably foreseeable future project. See Master Response 13: Limited Trail Riding for more information.

**Comment O4-36**

CDPR UAS Use for Park Activities (CA-52). UAS would have no impact on sensitive natural communities.

Draft EIR at 6-109 to 110. This conclusion is not sufficiently supported in the DEIR.

Response to Comment O4-36

This comment is from CBD's comment letter submitted on the 2020 Draft HCP and 2020 Draft EIR that was incorporated into their 2025 comment letter by reference.

The comment does not explain how the EIR analysis of CA-52 is inadequate.

CDPR use of Unmanned Aircraft System (UAS; CA-52) is included in the HCP (section 2.2.5.13) and addressed in the EIR as a proposed new activity. The operation of drones does not involve ground disturbance activity and would not alter physical characteristics of the environment. Therefore, operation of UAS would have no impact on sensitive natural communities such as designated vegetation communities, ESHA, riparian areas, or critical habitat.

**Comment O4-37**

A. CESA requirements for seven listed species are not met

The HCP does not propose applying for take authorization under CESA for the seven state listed species including:

- California least tern (*Sternula antillarum browni*) – Endangered and also Fully Protected (see below)
- Marsh sandwort (*Arenaria paludicola*) – Endangered
- La Graciosa thistle (*Cirsium scariosum* var. *loncholepis*) – Threatened
- Surf thistle (*Cirsium rhothophilum*) – Threatened
- Beach spectaclepod (*Dithyrea maritima*) – Threatened
- Nipomo Mesa lupine (*Lupinus nipomensis*) - Endangered
- Gambel's watercress (*Nasturtium [Rorippa] gambelii*) – Threatened

Recreational activities, including motorized vehicles, have the potential to impact some of these species, but the DEIR fails to provide a comprehensive analysis of impact from current ongoing activities. Therefore it fails to propose measures to minimize and fully mitigate the impacts of the proposed taking; propose a plan to monitor compliance with minimization and mitigation measures and the effectiveness of the measures; or describe the funding source and the level of funding available for implementation of the minimization and mitigation measures, as required by CESA for an Incidental Take Permit (ITP).

Response to Comment O4-37

This comment is from CBD's comment letter submitted on the 2020 Draft HCP and 2020 Draft EIR that was incorporated into their 2025 comment letter by reference.

The HCP supports an application to USFWS for take authorization under FESA. The seven state-listed species are covered species in the HCP.

The effect of current ongoing activities are baseline conditions and are not evaluated as a project effect in the EIR. The biological effects of ongoing activities are described in EIR Volume 3 Appendix D and summarized in the biological environmental setting (EIR Volume 1 section 6.2.7). See EIR Volume 1 section 3.1 Step 3: Identification of Existing Physical Conditions. Also see response to comment O4-27 and Master Response 6: CEQA Baseline and Scope.

The USFWS has prepared an Environmental Assessment under NEPA to assess the environmental effects of all take authorization under FESA. The HCP includes a comprehensive set of AMMs that mitigate the effects of taking of federal species.

In a parallel process, CDPR is coordinating with CDFW to prepare an NCCP and an EIR under CEQA to assess the environmental effects of all take authorization required under CESA (see EIR Volume 1 section 1.1; HCP section 1.5.3; HCP section 4.1; HCP section 4.4.3). See Master Response 10: California Fully Protected Species and NCCP. See responses to CDFW comment letter A2 and responses regarding concerns for state-listed species. Specific criteria for CESA take authorization are beyond the scope of the HCP and this EIR.

See Master Response 16: HCP Funding for responses to comment related to funding sources and availability.

**Comment O4-38**

B. The Draft HCP would allow take of Fully Protected Species without a NCCP in violation of law.

The California least tern is a fully protected species under California law (Fish & Game Code § 3511(b)(6)), and therefore any take of this species is unlawful under the fully protected statute except, as relevant here, as part of a Natural Communities Conservation Plan (NCCP) as provided by Fish & Game Code § 2835, or through avoidance of all potential impacts. The Draft HCP indicates State Parks intends to prepare an NCCP at a later time but the NCCP and HCP process should be coordinated and evaluated in a single DEIR. Moreover, unless State Parks ensures complete avoidance of impacts to least tern until the NCCP is adopted, State Parks will remain in violation of the law.

Response to Comment O4-38

This comment is from CBD's comment letter submitted on the 2020 Draft HCP and 2020 Draft EIR that was incorporated into their 2025 comment letter by reference.

See Master Response 10: California Fully Protected Species and NCCP and responses to See responses to CDFW comment letter A2 and comment O4-37 above.

**Comment O4-39**

C. Fails to meet requirements of the existing LCP and statutory requirements to protect coastal resources

The activities authorized under the Draft HCP do not comply with statutory requirements to protect coastal resources, the existing LCP, or the direction that Coastal Commission has provided for needed improvements in management. Whether State Parks ultimately addresses these issues through a new LCP or their proposed Public Works Plan (PWP), the resulting plan

in concert with any HCP adopted by State Parks must be consistent with these statutory directives.

As noted above, all of Oceano Dunes SVRA is defined as an Environmentally Sensitive Habitat Area (ESHA) by the Coastal Commission. ESHA must be protected. (Pub. Res. Code § 30240; *Bolsa Chica Land Trust v. Superior Court* (1999) 71 Cal. App. 4th 493, 507-508.) As the California Supreme Court recently explained:

> ESHA, however, are "rare or especially valuable" habitat areas in the coastal zone, given enhanced protection by the Coastal Act. ([Pub. Res. Code § 30107.5.) They must be "protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas." ([*Id.*] § 30240, subd. (a).)

(*Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal. 2 Cal. 5th 918, 936; emphasis added].)

CDPR has a decades long history of non-compliance with San Luis Obispo County's Local Coastal Program and the Coastal Development Permit ("CDP") for ODSVRA. The 1982 CDP which the California Coastal Commission ("CCC") issued for ODSVRA was purposefully only authorized temporarily and on an interim basis. Yet 27 years later, a June 2019 CCC Summary of Staff Recommendation regarding the LCP review noted that CDPR has never fulfilled the requirements of the CDP, nor does it operate in compliance with the Coastal Act.

The June 2019 CCC Staff Recommendation concluded that " ... it is time to start thinking about ways to transition the park away from high-intensity OHV use to other less intensive forms of public access and recreation."

CCC staff recommended and in July 2019 the CCC directed the CDPR to implement 15 "shortterm/interim solutions" to address the ongoing CDP violations and begin to come into compliance with the Coastal Act. The CCC directed CDPR to incorporate these 15 management measures into the Public Works Plan which CDPR is preparing to supplant the CDP, and to make them permanent conditions within the PWP process.

The 15 management measures include requirements which would increase protection and reduce take of snowy plovers and least terns:

- Increase predator management, including controlling trash and food waste;
- Increase enforcement of vehicular use limits and speed limits;
- Additional fencing to better protect coastal resources;
- A separate CDP for special events which could adversely impact coastal resources;
- Prohibit night riding;
- Prohibit vehicle crossing of Arroyo Grande Creek;
- Reduce OHV use limits;
- Eliminate exceptions to OHV use limits; and
- Make the endangered species exclosure areas permanent

The CCC clarified the Commission's directives in a July 12, 2019 letter and gave CDPR until summer of 2020 to prepare a sufficient PWP which incorporates these 15 measures and complies with the Local Coastal Program.

On July 23, 2019 the CCC sent a letter to CDPR confirming that the Coastal Commission "concluded and decided that ODSVRA cannot continue to operate as it has while complying

with the base CDP, the Coastal Act, and the LCP, and that it is time to explore alternatives to transition ODSVRA away from high-intensity off-highway vehicle (OHV) use to other forms of public access and recreation in order to meet Coastal Act requirements."

The July 23, 2019 CCC letter called out ongoing rare and endangered species and habitat issues at ODSVRA:

> "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 exclosure 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."

The July 23, 2019 CCC letter also called out issues with the PWP and further noncompliance problems posed by proposed PWP projects:

> "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.

The CCC felt compelled to send another letter to CDRP on August 5, 2019 reiterating the need for "State Parks to take seriously both the Commission's articulated direction in the Commission's letter and the staff report-recommended changes, and to ensure that both of these are reflected in upcoming PWP products and efforts, including ultimately through a PWP submittal for Commission consideration by summer of 2020." And on December 13, 2019 CCC sent a letter noting that the 15 items the Commission required be addressed in the PWP are in fact largely not being addressed and that CDPR "will need to demonstrate to the Commission how these issues are being addressed, including in the upcoming February progress update." The Commission's December 2019 letter also warned that the revised Oso Flaco campground proposal in the PWP is not consistent with San Luis Obispo County LCP, and cannot be approved. The Commission's letter noted that the PWP ignores the Commission's explicit direction to State Parks to phase out OHV use altogether. State Parks has indicated to the Commission that it does not intend to pursue non-OHV options in the PWP. The Commission's

letter explained that such disregard for the Commission's explicit direction will lead to a PWP that cannot be approved by the Commission as consistent with the LCP:

> Continuing OHV use in dune ESHA is inconsistent with both Coastal Act and LCP provisions regarding the protection of sensitive dune habitats, and a PWP that continues long term OHV use cannot be found consistent with the LCP. As the Commission identified in its action, including through the letter that provides the Commission's direction to Parks that is dated July 12, 2019: "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."

As late as January 2020 CDPR continued to assert that the CCC had not given a directive on phasing out OHV use at ODSVRA, sending a letter on January 23, 2020 to the CCC stating the agency's belief that the Commission's directive required them only to address "15 new conditions to the existing [Coastal Development Permit]…in its PWP development process" and that "the explicit direction and action of the Commission did not include phasing out off highway vehicle use altogether at Oceano Dunes SVR A."

In the 11 months since the July 2019 CCC meeting, CDPR has continued to deny publicly and in letters to the CCC that the Commission ever directed CDPR to begin moving away from off-road vehicle use at ODSVRA, despite explicit communications from the CCC confirming this directive.

Since 2019 the CDPR has held numerous public meetings and published and disseminated drafts and conceptual documents regarding the PWP. CDPR continues to refuse to incorporate the 15 management measures into the PWP, as directed by the CCC, and the draft PWP has no sign of improving management and operation of ODSVRA to better protect snowy plovers and least terns.

In sum, the proposed activities under the HCP would not comply with the LCP or Coastal Commission direction and therefore should not be adopted. The DEIR fails to address these issues and is inadequate.

Response to Comment O4-39

This comment is from CBD's comment letter submitted on the 2020 Draft HCP and 2020 Draft EIR that was incorporated into their 2025 comment letter by reference.

This comment reflects outdated information. The EIR has been updated to reflect recent information including court cases. This comment does not provide substantial evidence for CDPR consideration of how the EIR analysis is inadequate.

Also see Master Reason Response 4: Consistency with Coastal Act and response to Coastal Commission comment letter A1. See EIR Volume 1 section S.5.1 Unresolved Coastal Development Permit (CDP) Issues for more information.

The PWP is currently on hold; see Master Response 5: Public Works Plan for more information.

Although the comment expresses disagreement with the activities proposed for coverage under the HCP, the comment does not provide substantial evidence for CDPR consideration of how the EIR's analysis of impacts to coastal resources or the selection of alternatives is inadequate. The HCP is a conservation planning document used for the purpose of supporting an ITP application to USFWS for take authorization of covered species. Changes to existing park management and

operations, other than the new activities analyzed in the EIR, are not authorized by and are not the subject of the EIR. See also Master Response 1: HCP Purpose and ITP Issuance Requirements and Master Response 6: CEQA Baseline and Scope.

**Comment O4-40**

D. The Draft HCP undermines State Parks Public Trust Obligations

State Parks has a public trust obligation to protect waters and wildlife. Pursuant to statute (as well as common law) the waters and wildlife resources of the State of California are held in trust for the people of the State. (Fish & Game Code §711.7(a); *see also* Fish & Game Code § 1801 [it is "the policy of the state to encourage the preservation, conservation, and maintenance of wildlife resources under the jurisdiction and influence of the state"], *Ex Parte Maier* (1894) 103 Cal. 476, 483; *People v. Harbor Hut Rest*. (1983) 148 Cal. App. 3d 1151, 1154, *Betchart v. California State Dept. of Fish and Game* (1984) 158 Cal. App. 3d 1104, 1106.)

All state agencies are obliged to protect this public trust and the California Legislature has specifically required all state agencies, including State Parks, to "conserve, protect, restore and enhance" any endangered or threatened species and their habitat when undertaking any state action, such as issuance of a permit or adoption of a plan. (Fish & Game Code §§ 2052, 2055; *Mountain Lion Foundation v. Fish & Game Com*. (1997) 16 Cal.4th 105, 125.) State Parks, therefore, has an affirmative statutory public trust duty to ensure the conservation, preservation, recovery and enhancement of threatened, endangered, and candidate species and their habitats in developing and adopting an HCP.

The public trust doctrine "places on the state the responsibility to enforce the trust." (*Center for Biological Diversity, et al., v. FPL Group, Inc.* (2008) 166 Cal App. 4th 1349, 1368, 1361 ["[I]t is clear that the public trust doctrine encompasses the protection of undomesticated birds and wildlife. They are natural resources of inestimable value to the community as a whole. Their protection and preservation is a public interest."].) This duty carries with it the "implied power to do everything necessary to the execution and administration of the trust." (*People v. California Fish Co.* (1913) 166 Cal. 576, 597.) The Supreme Court has identified this substantive duty "to protect the people's common heritage," holding that an agency may surrender "that right of protection only in rare cases when the abandonment of that right is consistent with the purposes of the trust." (*Nat'l Audubon Soc'y v. Superior Court* (1983) 33 Cal.3d 419, 441.)

In developing the HCP State Parks must ensure that it is meeting its public trust obligation to use "all necessary methods and procedures" to conserve, protect, restore and enhance listed species and to protect biologically sustainable populations of other species. (Fish & Game Code §§ 2052, 2055, 2061.)

Further, State Parks' consideration of impacts to public trust wildlife resources in the HCP must be informed by the Department of Fish and Wildlife and the Coastal Commission, which each have special responsibilities as trustees.

For example, as detailed above, the Coastal Commission has stressed that the entire Oceano Dunes SVRA is an Environmentally Sensitive Habitat Area (ESHA) and because OHV use is not resource dependent (meaning it can occur outside of the coastal zone), it can only be authorized if that use is consistent with protection of the ESHA values. And the Commission has specifically addressed the need to end vehicle crossings of Arroyo Grande Creek to protect water and fish resources. State Parks cannot lawfully adopt an HCP that destroys public trust resources

in wildlife and water or that violates other California coastal protection laws, including protection of ESHA and other conservation of other coastal values.

The Department of Fish and Wildlife is responsible as the trustee for fish and wildlife resources. (Fish and Game Code § 1802.) As part of the CEQA review process, the Department discharges its public trust obligations through its role as a CEQA "trustee agency" and/or a "responsible agency" when permits or agreements from the Department are required. During CEQA review, the Department is required to "consult with lead and responsible agencies and shall provide, as available, the requisite biological expertise to review and comment upon environmental documents and impacts arising from project activities, as those terms are used in [CEQA]." (Fish and Game Code § 1802.) In the CEQA process the Department is charged with using its biological expertise to "focus on any shortcomings" in the environmental review. (14 Cal. Code Regs § 780). Thus, pursuant to statute, the Department is obligated to provide its requisite biological expertise to review and comment upon environmental documents and the significance of any impacts to state protected species and other wildlife resources arising from proposed project activities. State Parks must consider and should defer to the Department's expertise regarding impacts to species and trust resources in the draft HCP.

Response to Comment O4-40

This comment is from CBD's comment letter submitted on the 2020 Draft HCP and 2020 Draft EIR that was incorporated into their 2025 comment letter by reference.

See response to comment O4-24.

**Comment O4-41**

III. THE ODD DRAFT HCP FAILS TO MEET THE REQUIREMENTS OF THE FEDERAL ESA

A. ESA Background Law

The ESA, by way of its "language, history, and structure . . . indicates beyond doubt that Congress intended endangered species to be afforded the *highest* of priorities," for protection under the law. (*Tennessee Valley Authority v. Hill*, 437 U.S. 153, 174 (1978) [emphasis added].) Thus, the ESA prohibits the "take" of a listed species where "take" of a species is includes to "harass, harm, pursue, hunt, shoot, wound kill, trap, capture, or collect, or to attempt to engage in any conduct." (16 U.S.C. § 1532(19).) The ESA provides exceptions that in narrow circumstances allow for incidental take under Section 7 and Section 10. (16 U.S.C. §§ 1536(a)(2), 1539(a)(1)(B).) As relevant to the proposed HCP here, the ESA Section 10 provides an exception to the take prohibition by allowing the issuance of an incidental take permit ("ITP") for an HCP where "such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity." (16 U.S.C. § 1539(a)(1)(B).) In issuing an HCP, the Service must also comply with Section 7 obligations and undertake formal consultation to ensure that that granting the permit "is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [designated critical] habitat of such species . . . " (16 U.S.C. §§ 1536(a)(2); 50 C.F.R. § 402.14; 50 C.F.C. § 402.02).)

In addition to its obligations under the ESA, FWS also must satisfy its obligations under the National Environmental Policy Act ("NEPA") before it may issue an ITP. Because FWS has not yet provided its NEPA document for public review, the Center reserves the right to comment further on NEPA compliance and includes only brief comments on that issue here, including the

need for an EIS to be prepared. NEPA requires that all federal agencies carrying out "major Federal actions significantly affecting the quality of the human environment" produce a "detailed statement" that specifies the impact the proposed action will have on the environment, the adverse effects resulting from the proposed action that cannot be avoided, and any alternative actions. 42 U.S.C. § 4332(C)(i–iii).) Under NEPA, the agency must also consider "any irreversible . . . commitments of resources," such as the loss of a protected species or destruction of critical habitat caused by the proposed action. (*Id*. at § 4332(c)(iv–v).) All Federal agencies must prepare an environmental impact statement, ("EIS") prior to engaging in "major Federal actions" that significantly affect the environment. (42 U.S.C. § 4332(c).) Because the proposed Covered Activities under the HCP would cause significant direct, indirect and cumulative impacts to the environment, the Service must prepare an EIS before granting an ITP for those activities.

Pursuant to the CEQ NEPA regulations, "significantly" is broadly defined such that an EIS is required whenever one of the conditions enumerated in the regulations is met, which include both context and "intensity" factors. (40 CFR §1508.27.) Many of these factors are present in this instance including, but not limited to: effects to wetlands and ecologically critical areas, the presence of significant controversy, uncertain effects, cumulatively significant effects, and adverse effects to listed species. (40 CFR §1508.27 (b)(3),(4)(5)(6) &(9).) Courts have found that where any significance factor is shown, an EIS may be required. For example,

> Agencies must prepare environmental impact statements whenever a federal action is "controversial," that is, when "substantial questions are raised as to whether a project . . . may cause significant degradation of some human environmental factor," [], or there is "a substantial dispute [about] the size, nature, or effect of the major Federal action." [].

(*National Parks & Conservation Ass'n v. Babbitt*, 241 F.3d 722, 736 (9th Cir. 2001) (internal citations omitted).) Based on these factors, the Service must prepare an EIS for this proposed HCP and ITP.

Response to Comment O4-41

This comment is from CBD's comment letter submitted on the 2020 Draft HCP and 2020 Draft EIR that was incorporated into their 2025 comment letter by reference.

This is a comment on FESA and the NEPA process. The USFWS has prepared an Environmental Assessment (EA) pursuant to NEPA for issuance of an ITP for covered activities requiring take authorization under FESA. USFWS determines the level of NEPA review that is appropriate for the HCP. The EA was released for a 60-day public review on November 24, 2025. Comment on the EA and the federal agency action under NEPA is outside the scope of this EIR.

The USFWS will evaluate the HCP to determine if the conservation program meets ITP issuance criteria.

The USFWS is the regulatory authority under FESA Section 7 to assess impacts to critical habitat from all proposed ITP covered activities identified in the HCP. The EA for the Oceano Dunes District HCP concludes the impacts on critical habitat from all ITP covered activities, which includes the project activities evaluated in this EIR, would not be significant. See Master Response 7: Reduction of Boneyard and 6 Exclosures (CA-50).

**Comment O4-42**

1. ESA Section 10

Section 10 of the ESA (16 U.S.C. § 1539(a)(1)(B)), provides an exception to the take prohibition for issuance of an ITP only where the applicant provides a conservation plan and the Service makes a determination that the "impact which will likely result from such taking" and the "steps the applicant will take to minimize and mitigate such impacts . . . will not appreciably reduce the likelihood of the survival and recovery of the species in the wild." 16 U.S.C. § 1539(a)(2)(A)(i–iv). Before issuing an ITP, FWS must make a finding that the application and conservation plan provide:

(i) the taking will be incidental;

(ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;

(iii) the applicant will ensure that adequate funding for the plan will be provided;

(iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and

(v) the measures, if any, required under subparagraph (A)(iv) will be met.

(16 U.S.C. § 1539(a)(2)(B).) The term "measures" in subsection (v) refers to "any additional measures the Secretary may require as being necessary or appropriate for the purposes of the plan." (*Id*. at § 1539 (a)(2)(A)(iv).)

Pursuant to the regulations, 50 C.F.R. § 17.22(b)(1), an ITP and corresponding HCP are required by law to include:

(i) A complete description of the activity sought to be authorized;

(ii) The common and scientific names of the species sought to be covered by the permit, as well as the number, age, and sex of such species, if known;

(iii) A conservation plan that specifies:

(A) The impact that will likely result from such taking;

(B) What steps the applicant will take to monitor, minimize, and mitigate such impacts, the funding that will be available to implement such steps, and the procedures to be used to deal with unforeseen circumstances;

(C) What alternative actions to such taking the applicant considered and the reasons why such alternatives are not proposed to be utilized; and

(D) Such other measures that the Director may require as being necessary or appropriate for purposes of the plan . . . .

After considering the statutory and regulatory elements required for an ITP application and HCP, it is clear that the ODD HCP fails to provide a complete account of the proposed activities, sufficient information related to the number, age, and sex of the listed species to be included in the permit, or how the use of habitat loss as proxy will adequately address impacts to these listed species. The applicant also fails to include sufficient information related to the anticipated take for all listed species under the permit, as well as detailed steps that the applicant will take to monitor, minimize, and mitigate the impacts. There simply is not enough information in the HCP

regarding the Covered Activities and where they will occur to satisfy the requirements for an ITP and its corresponding HCP as set forth under Section 10(a)(2)(A) of the ESA and the corresponding regulations.

An applicant for an ITP and HCP must include a description of the activities that will be covered by the permits. The description of the activities should include those: (1) likely to cause incidental take of a listed species; (2) "reasonably certain" to arise during the existence of the permit; and (3) are within the applicant's control. Whether impacts are reasonably certain to occur is a low bar. The proposed HCP does not fully describe all of the activities that will be covered by the ITP or specify where such activities will occur. Instead, large discretion is left to the applicant to determine what activities will be included among the range of operations and maintenance activities it undertakes as well as "minor new construction" projects. The applicant has not provided sufficient detailed information to determine what activities the permits will cover, or the likely impacts to all listed species in the Plan Area including the number of individuals of each listed species that will be impacted.

Response to Comment O4-42

This comment is from CBD's comment letter submitted on the 2020 Draft HCP and 2020 Draft EIR that was incorporated into their 2025 comment letter by reference.

The HCP describes in detail 52 covered activities including the nature of the activity, where it occurs, which species would be affected by the activity, whether the activity presently occurs or is a new activity, and includes avoidance and minimization measures (AMMs). The comment does not identify what information is missing from this detailed account, is simply just a recitation of the law. Although the comment expresses disagreement as to the adequacy of the HCP, the comment does not provide substantial evidence for CDPR consideration of how the EIR's analysis of impacts or the selection of alternatives is inadequate.

**Comment O4-43**

2. ESA Section 7

Prior to granting an ITP application, FWS must also undergo the consultation process with itself, as outlined in Section 7 of the ESA, to assure that granting the permit "is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species." (16 U.S.C. § 1536(a)(2).) As the Ninth Circuit has explained, the inclusion of both survival and recovery in this definition requires consideration of recovery, and is not reasonably susceptible to a "survival only" interpretation. (*NWF v. NMFS*, 524 F.3d 917, 932 (9th Cir. 2007); *Gifford Pinchot Task Force v. United States Fish & Wildlife Service*, 378 F.3d 1059, 1070 (9th Cir. 2004).) A no jeopardy determination is arbitrary and capricious when the agency fails to articulate a rational connection between the facts found and the no jeopardy conclusion. (*Wild Fish Conservancy v. Salazar*, 628 F.3d 513, 516 (9th Cir. 2010).) The burden of proof is on the agency to show that an action will not harm the protected species.

When engaging in Section 7 consultation to determine whether the approval of an ITP will cause jeopardy, FWS is required to render its decision by evaluating the "best scientific and commercial data available." (16 U.S.C. § 1536(a)(2).) If FWS determines the project is unlikely to cause jeopardy to the species or adverse modification of its habitat, the agency must: provide a statement specifying the impact of the incidental take on the listed species, outlining "reasonable and prudent measures" to minimize the impact from incidental take, and setting forth any

conditions the agency and applicant must follow in accordance with the ITP. (16 U.S.C. § 1536(b)(4)(A–C).)

When FWS undergoes formal consultation, it shall provide information related to: 1) the action to be considered; 2) the specific area that will be affected by the action; 3) a description of the threatened and endangered species and/or critical habitat that may be affected by the action; 4) a description of the effects the action may have on the listed species, critical habitat, and an analysis of any cumulative effects; 5) relevant reports including biological assessments and/or environmental impact statements that have been prepared related to the action; and 6) any relevant information related to the listed species, critical habitat, and proposed action. (Id. § 402.14(c)(1–6).) When considering the adverse effects, FWS must also quantify the amount of take and habitat loss that it has authorized to date and analyze the impact of those authorizations on the survival and recovery of the species. (*Id*. § 402.14.)

An Incidental Take Statement ("ITS") must set forth a trigger that, when reached, results in an unacceptable level of incidental take, requiring the parties to re-initiate consultation. (*Ariz. Cattle Growers' Ass'n v. U.S. Fish & Wildlife*, 273 F.3d 1229, 1249 (9th Cir. 2001).) Preferably, the trigger is numerical, but the Service may use a surrogate - for example, changes in ecological conditions affecting the species. (*Id*. at 1250.) If a surrogate is used, the agency must articulate a rational connection between the surrogate and the taking of the species. (*Id*. at 1250-51.) The Ninth Circuit has rejected a surrogate trigger so vague that it failed to "provide a clear standard for determining when the authorized level of take has been exceeded," (*id*. at 1251,) and a surrogate so broad – "all spotted owls" associated with the project -- that it "could not adequately trigger reinitiation of consultation." (*Or. Natural Res. Council v. Allen*, 476 F.3d 1031, 1038 (9th Cir. 2007). For the ODD HCP the Service appears to be relying on approximations of habitat acres for a truncated set of listed species that will be affected as a proxy for the take from the Covered Activities, which is inadequate. The Service has failed to justify the need to utilize habitat rather than a numeric value for the permitted take or to show that the surrogate used will provide the needed trigger for reinitiation of consultation.

The ESA's implementing regulations provide that "[i]n order to monitor the impacts of incidental take, the Federal agency or any applicant must report the progress of the action and its impact on the species to the Service as specified in the incidental take statement." (50 C.F.R. § 402.14(i)(3).) The Service is responsible for specifying in the statement how the applicant is to monitor and report the effects of the action on listed species. (*Wild Fish Conservancy v. Salazar*, 628 F.3d 513, 531-32 (9th Cir. 2010).) The amount of take must be linked to a practical method to determine if that limit has been exceeded.

In the Biological Opinion for the HCP and ITP, the FWS will need to address all of these factors and account for all of those covered species in the action area, including providing a full explanation why the take of some listed species that may be impacted is not covered and its use of habitat acres rather than numeric limits for take of listed species. The Service cannot authorize an HCP for Covered Activities that may take listed species that are not covered in the ITP or another already existing take authorization under section 7 or section 10 because the Service cannot authorize activities for take of one species which would lead to unauthorized take of another species – to do so would violate the core of the ESA's prohibition on take.

Response to Comment O4-43

This comment is from CBD's comment letter submitted on the 2020 Draft HCP and 2020 Draft EIR that was incorporated into their 2025 comment letter by reference.

The HCP is an applicant driven document prepared in coordination with the USFWS. At this time, the USFWS has not completed Section 7 consultation for the HCP or issued the ITP to permit the take of covered species. The USFWS will analyze the data, and other best available data on the conservation program and the impacts of the covered activities, to determine whether the conservation program in the HCP, with AMMs and mitigation described in the HCP, sufficiently offsets the take requested by CDPR. See Master Response 1: HPC Purpose and ITP Issuance Requirements.

The USFWS is the regulatory authority under FESA Section 7 to assess impacts to critical habitat from all proposed ITP covered activities identified in the HCP. The EA for the Oceano Dunes District HCP concludes the impacts on critical habitat from all ITP covered activities, which includes the project activities evaluated in this EIR, would not be significant. See Master Response 7: Reduction of Boneyard and 6 Exclosures (CA-50).

CEQA Guidelines section 15204(a) states: "In reviewing draft EIRs, persons and public agencies should focus on the sufficiency of the document in identifying and analyzing the possible impacts on the environment and ways in which the significant effects of the project might be avoided or mitigated…" CEQA Guidelines 15088(a) states: "…The lead agency shall respond to comments raising *significant environmental issues* [italics added] received during the noticed comment period and any extensions ...". As the comment pertains only to federal permitting process, no response to this comment is required by CDPR.

**Comment O4-44**

3. 2016 HCP Handbook

In December 2016 the Service and NMFS adopted a new joint HCP Handbook. To the extent that this handbook is consistent with the ESA and other laws, it can provide helpful guidance to the Service in reviewing and approving HCPs.

For example, the 2016 HCP Handbook makes is clear that all listed species affected by Covered Activities must be addressed in the HCP. Regarding listed species in the plan area, the 2016 HCP Handbook states:

> Helpful Hint: All ESA-listed species that will be taken through implementation of covered activities must be included as covered species, or we cannot issue the incidental take permit (unless covered by another ESA mechanism). *The applicant must adjust covered activities to avoid take of ESA-listed species that are not covered by the HCP*.

(2016 HCP Handbook at 7-3; emphasis added.) FWS must also fully consider listed species that are managed by NMFS in considering a proposed HCP, this is particularly important for listed anadromous fish – many of which are present in the HCP plan area.

> 7.4.3 Anadromous Fish
>
> Close collaboration between the Services is required when an applicant's proposed covered activities *are likely to cause take of both FWS and NMFS listed species*, *such as salmon* and sturgeon. When both agencies are working with an applicant on development of an HCP, careful planning is necessary to ensure efficient development of the plan. Any differences the two agencies have about minimizing or mitigating take for a species or a life stage of a species in an HCP should be discussed early in the process so issues can be resolved.

(2016 HCP Handbook at 7-9; emphasis added.) The 2016 HCP Handbook also emphasizes the need for coordination with NMFS, other Federal and State agencies, tribes and local officials. (*See, e.g.,* 2016 HCP at 4-2 to 4-6 ("Identifying Stakeholders".)

The DEIR states:

> The steelhead South-Central California Coast ESU is not a covered species because NOAA Fisheries concluded that the existing covered activities listed in the HCP are not likely to take steelhead with the implementation of AMMs (NOAA Fisheries, 2008). In addition, the HCP does not introduce new covered activities into aquatic areas such as Arroyo Grande Creek and Pismo Creek where steelhead occur.

DEIR at 6-46.

However, FWS cannot rely on a 2008 letter rather than new consultation. And perhaps more importantly, the issue is not whether "new" activities are being introduced but whether take may occur due to the activities authorized under the HCP. Because take of steelhead may occur, particularly due to motorized vehicles crossing Arroyo Grande Creek, regardless of the AMMs steelhead should be a covered species and FWS should coordinate with NMFS to include steelhead in the HCP - unless motorized crossings of the creek are prohibited.

While the 2016 HCP Handbook provides useful guidance in many areas, the Center remains concerned that reliance on the no net loss policy could lead to ESA violations. According to the 2016 HCP Handbook, for take to be fully offset, the Services must determine that "the biological value that has been lost (from covered activities) will be at least replaced (through implementation of conservation measures) with equivalent biological value." While this bare minimum must be met, it is worth noting that the 1996 HCP Handbook did not use the "no-net-loss" goal at all, and instead framed this in terms of the requirements of Section 10 — to minimize and mitigate to the maximum extent practicable, which clearly supports the objectives of conservation including recovery. It appears the HCP derived this incorrect legal standard from the 2016 HCP Handbook, which cannot be properly relied on where it departs from the statutory requirements. For example, in this case the "net benefit, or at a minimum no-net-loss" standard set forth in the 2016 HCP Handbook drastically departs from the statutory requirements for conservation and existing precedents, and reliance on that standard would result in a violation of the ESA. State Parks and the FWS must ensure that the HCP is truly a conservation plan and supports both survival and recovery of the affected listed species. And, as explained above, because the HCP is being developed by State Parks it must also meet the California legal requirements, which require that impacts to listed species be fully mitigated.

As a compliance mechanism for the Endangered Species Act ("ESA"), the HCP must ensure not merely the continued survival of the Covered Species, but also the recovery of these species. The Ninth Circuit explained that the purpose of critical habitat designations is not merely to ensure the species' survival, but also to "carve out territory" that is "essential for the species' recovery." (*Gifford Pinchot Task Force v. United States Fish & Wildlife Serv*., 378 F.3d 1059, 1070 (9th Cir. 2004).) *Gifford Pinchot* concluded that the ESA views "conservation and survival as distinct, though complementary, goals, and the requirement to preserve critical habitat is designed to promote both conservation and survival." (*Id*.) Applying the principles of *Gifford Pinchot* here, the HCP must do more than merely mitigate the impacts of the Covered Activities and must ensure impacts to all listed species affected are fully considered and provided conservation value to support recovery.

Response to Comment O4-44

This comment is from CBD's comment letter submitted on the 2020 Draft HCP and 2020 Draft EIR that was incorporated into their 2025 comment letter by reference.

The HCP does not include steelhead for the reasons stated in the EIR as noted in the comment. The EIR does assess the potential for new proposed activities to affect steelhead (see section 6.2.3).

See response to comment O4-43 regarding comments on the FESA permitting process. The USFWS will analyze the data, and other best available data on the conservation program and the impacts of the covered activities, to determine whether the conservation program in the HCP, with AMMs and mitigation described in the HCP, sufficiently offsets the take requested by CDPR. Also see Master Response 1: HCP Purpose and ITP Issuance Requirements regarding the HCP contribution to species recovery.

The USFWS is the regulatory authority under FESA Section 7 to assess impacts to critical habitat from all proposed ITP covered activities identified in the HCP. The EA for the Oceano Dunes District HCP concludes the impacts on critical habitat from all ITP covered activities, which includes the project activities evaluated in this EIR, would not be significant. See Master Response 7: Reduction of Boneyard and 6 Exclosures (CA-50).

**Comment O4-45**

1. *Impacts to Covered Species included in the HCP from Covered Activities are not Adequately Identified or Analyzed*

As explained in detail above regarding the inadequacies of the Draft EIR, among the issues that are not adequately identified or analyzed are impacts to listed species from use of pesticides and herbicides. The HCP must provide more information on this issue.

As discussed above in the wetlands section, the current activities in the Park and the SVRA utilize numerous pesticides and herbicides, primarily in order to control invasive species. Because some of the products are toxic to covered species as well as non-covered but sensitive species and/or their pollinators, the DEIR needs to analyze these impacts. If such use is continued, State Parks must clearly put in place mitigation measures that safeguard the non-target plants and animals that are covered species or other rare species and pollinators

2. *The Covered Activities may affect listed species in the Action Area that are not included as Covered Species and the Draft HCP does not ensure that impacts are fully avoided.*

As stated above, the HCP fails to include South-Central California Coast steelhead trout (*Oncorhynchus mykiss*) as a covered species. Steelhead may be taken by vehicles crossing Arroyo Grande Creek and other activities. The HCP should be revised to include steelhead as a covered species.

3 *Key Information About Covered Activities and Mitigation Measures is Absent.*

Many of the conclusions in the Draft HCP and Draft EIR appear to rely primarily on implementation of mitigation measures in plans that are not final or provided including:

-Predator management plan (AMM 37);

-New Particulate Matter Reduction Plan;

-Draft Aquatic Pesticide Application Plan;

-Revegetation plan(s) associated with Lake or Streambed Alteration Agreement (1600-2012-0001- R4);

-Nesting Season Management Plan(s);

-or other plans or protocols that are routinely used to avoid, minimize or mitigation impacts to species from current or proposed activities.

Under the Draft HCP implementation of all of these plans, measures, agreements, protocols, practices and standards depends heavily on discretionary application and enforcement by State Parks. Neither State Parks nor the Service can rely on documents that are not provided to the public for review in reaching the conclusions about effects to listed species. This would undermine public participation and review and is a significant flaw in the process.

ESA Section 10(a)(2)(8) requires the Secretary to provide opportunity for public comment addressing each one of the Secretary's findings under that section. In *Gerber v. Norton*, 294 F.3d 173, 178-184 (DC Cir. 2002), the D.C. Circuit considered the Secretary's approval of an HCP application which was based in large part on a map describing the placement of a road. The Court rejected the Secretary's approval in part because he failed to provide the map for public inspection prior to public comment. The court held that "opportunity for public comment must be a meaningful opportunity," which was not provided where information relied upon by the Secretary was not publicly available.

This HCP presents more troubling facts than *Gerber v. Norton*. In *Gerber*, the maps relied upon by the Secretary were available at a USFWS field office, just not publicly distributed as necessary to fulfill Section 10. In contrast, the HCP and Draft EIR repeatedly rely upon documents that have not been disclosed to the public at all. If the measures, plans, and other information are to be used as the basis of the Service's rationale for approving the Draft HCP and issuing an ITP, the Service must share that information and analysis with the public. (See also discussion above, regarding CEQA requirement that documents be provided.)

Response to Comment O4-45

This comment is from CBD's comment letter submitted on the 2020 Draft HCP and 2020 Draft EIR that was incorporated into their 2025 comment letter by reference.

See response to comment O4-32 above regarding pesticides

See response to comment O4-44 above regarding steelhead.

Conclusions in the HCP and EIR do not rely on implementation of mitigation measures in plans that are not final or not provided to address impacts or reach conclusions about effects on listed species.

The measures identified in the comment are plans developed to address existing park operations. These plans are included in the HCP as either covered activities or AMMs. These are not plans prepared as new mitigation for project impacts caused by proposed new covered activities. AMMs, SPRs, and any plans, programs, or orders relied upon for determining project impact significance are described in the EIR.

For example, the SNPL and CLTE predator management program (CA-12b) is fully described in HCP section 2.2.2.1.2 as an existing program within park's management of natural resources and incorporated into AMMs, e.g., per SNPL AMM 37, the existing predator management program is reviewed annually by USFWS. The results of the predator management are annually reported

in the annual CLTE and SNPL nesting season report (HCP Appendix G) and available to interested parties via CDPR's website.

Existing biological effects of CA-44 Dust Control Program (referenced in the 2020 Draft EIR as the Particulate Management Plan or PMRP) are included in EIR Volume 3 Appendix D. The Dust Control Program, including any change to the exiting program, is subject to separate environmental review under CEQA. See Master Response 8: Dust Control Program (CA-44).

The Aquatic Pesticide Application Plan (APAP; HCP section 2.2.5.11) is included as part of the pesticide use an HCP covered activity (CA-51). The APAP is not mitigation for project effects.

CDPR has a Streambed Alteration Agreement with CDFW for CA-26 Routine Riparian Maintenance, which is part of its existing operations. Existing biological effects of CA-26 are included in EIR Volume 3 Appendix D. The Streambed Alteration Agreement is not mitigation for project effects and is unrelated to proposed new activities addressed in the EIR.

Nesting season management plans have been prepared at the start of each breeding season. The 2023 plan is presented in HCP Appendix G providing the content for review. As stated in the HCP discussion of SNPL and CLTE management (HCP section 2.2.2.1.2), the management and monitoring measures described in the annual nesting reports provided the foundation for the AMMs in the HCP and were incorporated into the conservation program.

**Comment O4-46**

C. The Draft HCP Presents Avoidance Measures That Are Unenforceable and Ineffective.

Many of the measures relied on would require significant monitoring, reporting, and enforcement effort that is not certain to occur under the HCP and not fully funded. The HCP cannot rely on such measures to show that species will be conserved.

Response to Comment O4-46

This comment is from CBD's comment letter submitted on the 2020 Draft HCP and 2020 Draft EIR that was incorporated into their 2025 comment letter by reference.

The majority of AMMs are measures currently implemented by State Parks for existing activities. The new measures incorporated into the conservation program are those identified in EIR Table 2-6. AMMs are incorporated into the conservation program as part of the project design and are considered features of the project (EIR Volume 1 section 3.1 Step 1: Incorporation of Avoidance and Minimization Measures (AMMs). Only mitigation measures for identified significant impacts are subject to MMRP requirements under CEQA.

The comment states many HCP measures require significant monitoring that is not certain to occur and not fully funded. The comment is speculative and without merit. The comment provides no examples or details of which measures are unlikely to occur or how funding would fall short and species conservation would be adversely affected.

The success of the conservation program is ultimately enforced by the take permit limits approved by USFWS. CDPR is committed to implementation of the HCP which includes daily monitoring, protective actions, and annual reporting to USFWS. If AMMs are not implemented, increased take would likely occur resulting in exceedance of take permit limits and enforcement actions by USFWS.

One of the issuance criteria for an ITP is that there is assurance for funding sources and levels proposed by the applicant in the HCP are reliable and will meet the purpose of the HCP. As a

result, the USFWS will ultimately determine if the HCP effort is certain to occur and funding is assured. If the USFWS finds that funding is not assured, then the ITP will not be issued. See Master Response 16: HCP Funding for additional response to funding comment.

**Comment O4-47**

D. The Draft HCP Fails to Provide for Conservation and Adequate Funding

Despite the mandates of the ESA that an HCP provide for habitat conservation to support listed species, the Draft HCP notes that sea level rise coupled with other activities may cause a net loss of habitat:

> If rising sea levels result in a net loss of covered species habitat over the term of the HCP, CDPR will discuss with the USFWS appropriate implementation measures to address these changes. Future actions responding to this changed circumstance will be determined by consensus agreement between CDPR and the USFWS, limited by the funding allocated for HCP and adaptive management implementation, and will be based on the nature and extent of the effects associated with rising sea levels.
>
> Draft HCP at 6-9.

This is inadequate because State Parks does not consider ways to offset the impacts or commit to offsetting the impacts in the Draft HCP or Draft EIR and is not committed to implementing such action or providing the funds needed—undermining the very heart of the commitments that HCPs require in order to obtain "take" coverage under section 10.

Response to Comment O4-47

This comment is from CBD's comment letter submitted on the 2020 Draft HCP and 2020 Draft EIR that was incorporated into their 2025 comment letter by reference.

The potential effects of climate change and sea level rise on coastal habitat within the HCP area is addressed in the HCP as a changed circumstance (HCP section 6.5.1.8). The loss of habitat from sea level rise is not an effect caused by HCP covered activities, including proposed new activities addressed by the EIR. The effects of sea level rise on a project site are not an environmental impact subject to CEQA review. See Master Response 11: Climate Change and Sea Level Rise. See Master Response 16: HCP Funding for additional response to funding comment.

**Comment O4-48**

E. Draft HCP Fails to Adequately Address Climate Change and Sea Level Rise

Sea level rise (SLR) and other climate change impacts are already occurring and increasing flooding along California's coast and will increasingly have profound effects on our coast habitats including Pismo Beach and Oceano Dune SVRA (Heady et al. 2018).

Based on Bernard et al. (2018) and GIS data provided by CDPR, the SLR model shows, in the areas of the current breeding-season exclosures, significant reductions in the coastal strand and shoreline habitat where snowy plovers and California least terns have nested in the past. Figures 1 through 5 present the output from the model at the current breeding-season exclosures.

One way to partially mitigate the impacts of ongoing sea level rise is to protect the coastal strand ecosystems and prevent activities that degrade them. Dugan and Hubbard (2010) identified the benefits to include:

> Increased conservation of these threatened coastal ecosystems could help retain sediment, promote the formation of dunes, and maintain biodiversity, wildlife, and human use in the face of rising sea levels.

The HCP needs to consider reducing or eliminating the riding areas and other impactful activities, including the proposed beach grooming, in order to prevent degradation of the coastal strand ecosystems and to help buffer the impacts from ongoing sea level rise.

An HCP cannot merely leave conditions for imperiled species slightly worse than they were prior to the existence of the HCP; the HCP must contribute to the both survival and recovery of the species covered by the HCP. The Center urges the State Parks to reconsider and revise the HCP to ensure it will provide for needed conservation that will support recovery.

Response to Comment O4-48

This comment is from CBD's comment letter submitted on the 2020 Draft HCP and 2020 Draft EIR that was incorporated into their 2025 comment letter by reference.

The potential effects of climate change and sea level rise on coastal habitat within the HCP area are addressed in the HCP as a changed circumstance (HCP section 6.5.1.8). Loss of habitat from sea level rise is not an effect caused by HCP covered activities, including proposed new activities addressed by the EIR. See Master Response 11: Climate Change and Sea Level Rise.

**Comment O4-49**

IV. Conclusion

As detailed above, the proposed habitat conservation plan as outlined in the Draft HCP document fails to meet the requirements of both Federal and State law and the Draft EIR is woefully inadequate. We hope and expect that State Parks will carefully consider these comments and other comments from members of the public and revise the Draft HCP to ensure that it provides robust habitat conservation of all affected species, supporting both survival and recovery. We look forward to reviewing a revised Draft HCP and revised Draft EIR that addresses all significant impacts to the environment from the covered activities and ensures all significant impacts are analyzed, avoided, minimized, or if necessary mitigated. Please do not hesitate to contact us with any questions.

Response to Comment O4-49

This comment is from CBD's comment letter submitted on the 2020 Draft HCP and 2020 Draft EIR that was incorporated into their 2025 comment letter by reference.

The comment does not specify how the EIR is inadequate. CDPR has carefully considered these comments and other comments on the EIR and provided responses. All significant impacts from new covered activities are analyzed, avoided, and minimized in the EIR. As stated in response to prior CBD comments, the HCP is not a recovery plan but the conservation program in the HCP area does contribute to species recovery, particularly for SNPL and CLTE. See Master Response 1: HCP Purpose and ITP Issuance Requirements for more information.

### 3.1.9 Comment Letter O5. EcoLogic Partners, Inc. (EcoLogic) and Specialty Equipment Market Association (SEMA)

#### Comment O5-1

While we recognize the need for and importance of the HCP, and while we commend State Parks for the excellent progress it has made over the last decade in improving nesting rates for Western snowy plover and California least tern, we believe the HCP, as currently drafted, fails to strike the proper balance between the SVRA's recreation mandate and the federal Endangered Species Act's requirement to protect listed species. As explained in this letter, the HCP's analytical assumptions regarding OHV risks to listed species tend to be "worst case" and are often based on little to no evidence. This, in turn, tilts the HCP heavily and unnecessarily towards biological conservation at the expense of public recreation. This same bias infects the REIR.

Response to Comment O5-1

The comment expresses opinion on the need for a HCP and the HCP's accommodation of recreation and conservation. No further analysis is needed.

See Master Response 3: HCP with CDPR Mission and Mandates for information on accommodating recreation and conservation.

#### Comment O5-2

The Draft Habitat Conservation Plan (HCP) for the Oceano Dunes District, prepared to secure a 25-year Incidental Take Permit (ITP) for ten covered species, relies heavily on formalizing and continuing restrictive management actions, that have historically limited access for Off-Highway Vehicle (OHV) recreation, rather than proposing flexible, adaptive strategies to accommodate the area's primary use. The HCP uses overly conservative, worst-case scenarios for cryptic species and incorporates conservative measures (like dust control vegetation) that permanently reduce the available open riding area, thereby fundamentally contradicting the mandate of the California Off-Highway Motor Vehicle Recreation Act (Pub.Res.Code, §§ 5090.01, et seq.) to ensure "that quality recreational opportunities remain available for future generations…and…balance OHV recreation impacts with programs that conserve and protect cultural and natural resources" of the SVRA. The HCP, despite its detailed structure for species management, fails to adequately balance conservation goals with the state mandate for OHV recreation because it enshrines and expands management control based on highly conservative take thresholds, creating an unacceptable, long-term precedent for prioritizing access restriction over optimizing balanced use.

Response to Comment O5-2

Given that both covered activities and the conservation program described in the HCP are largely ongoing, incidental take estimates are based primarily on past take data, and allow for take associated with new covered activities, including future Southern Exclosure reduction (CA-50), and evolving habitat from newly implemented dust control activities (CA-44). See Master Response 2: HCP Proposed Levels of Permitted Take for more information.

The Draft HCP includes dust control activities as a covered activity (CA-44), but dust control activities are not proposed or under review as part of the HCP. Comments directed at modifying dust control measures identified in the HCP are comments on the Dust Control Program characteristics and not a comment on the EIR environmental analysis. See Master Response 8: Dust Control Program (CA-44) for more information.

**Comment O5-3**

Further, the REIR's proposed solution for restoring OHV access at the ODSVRA – the incremental reduction of seasonal exclosures (CA-50) – is flawed because it makes restoration of 109 currently-restricted acres entirely contingent upon the park meeting uncertain biological standards over a minimum of eight years, creating an unacceptable level of regulatory uncertainty and management instability for OHV users who visit the SVRA.

Response to Comment O5-3

The commenter is correct that the 6 Exclosure reduction would be implemented incrementally and only if SNPL and CLTE targets and other criteria are met and sustained. See HCP section 5.2.3 and Master Response 7: Reduction of Boneyard and 6 Exclosures (CA-50) for more information. This is in keeping with the HCP's adaptive management approach to meeting biological goals and objectives; see section 5.5 of the HCP for more information.

**Comment O5-4**

A. Failure to Assess Impact of Avoidance and Minimization Measures (AMMs) on OHV Recreation

To manage take of listed species, the HCP relies on more than 500 Avoidance and Minimization Measures (AMMs), many of which have the potential to reduce the areas open to OHV use at the SVRA, thus continuing the trend of shrinking the riding opportunities at the park. The REIR, however, does not adequately evaluate these AMMs for their impacts on recreation or their potential inconsistency with the legal requirements of the OHMVR Act.

Response to Comment O5-4

The majority of AMMs for covered species are part of the ongoing natural resources management program in the HCP area. Almost all AMMs have previously been implemented, although some activities are new (e.g., Pismo Creek Estuary seasonal bridge, CDPR UAS use), and the AMMs for these activities are new as well. Existing AMMs are part of the environmental baseline and are not analyzed in the EIR, see Master Response 6: CEQA Baseline and Scope. Proposed new AMMs for covered activities are briefly listed in EIR Table 2-6. and fully presented in EIR Volume 3 Appendix B. Proposed new AMMs are not expected to impact recreation access.

**Comment O5-5**

B. HCP's and REIR's Focus on OHV Restrictions is Misdirected, Given That Predator Management Has Been Primary Factor in Improving Nesting Rates for Listed Bird Species

Both the HCP and REIR focus almost entirely on additional OHV use restrictions, such as the expanded Southern Exclosure, to achieve nesting and fledge objectives for Western snowy plover and California least tern. This focus is misdirected because the monitoring data set forth in Appendix G of the HCP show that targeted predator control, not restrictions on OHV use, has been the primary factor in improving nesting and fledge rates for these two listed bird species.

Response to Comment O5-5

Predator management at Oceano Dunes is an existing park operation included in the HCP. The predator management program utilizes adaptive management to address predation impacts (i.e., monitoring and implementing a specific response targeting the observed condition; HCP section

2.2.2.1.2). CDPR's predator management strategy and methods have been successful at protecting breeding SNPL and CLTE. See Master Response 9: Predation for more information.

CDPR does not propose any new projects that would adversely impact access to coastal recreation. New proposed or potential future projects subject to CDPR approval would benefit recreation access by developing new or improving existing facilities (i.e., reduction in seasonal exclosures [CA-50], limited trail riding [CA-42]), see HCP sections 2.2.5.3 and 2.2.5.11 and EIR Volume 1 sections 2.4.2.2 and 2.4.2.3 for more information. CA-50 and CA-42 (if implemented) are expected to result in a net gain in OHV recreation access compared to existing conditions.

**Comment O5-6**

C. HCP and REIR Rely on Scant Evidence OHV-Related Take of Cryptic Species to Impose Long-Term Restrictions on OHV Use

The HCP's take estimates for cryptic species like the Southwestern pond turtle (SWPT) are based on very little evidence; yet these take estimates inform the management measures that will be implemented at the SVRA. This means that OHV use will be restricted or lost to protect against low-probability risks. For species like SWPT, California red-legged frog (CRLF), and Western spadefoot (WSF), where documented take is rare or absent, the use of highly conservative, worst-case take thresholds (e.g., 8 SWPT adults/juveniles over the term) is not sufficiently supported by evidence showing that current levels of OHV use need to be further reduced. The stringent restrictions already in place, such as those detailed in the Superintendent's Orders (Appendix B), make the remaining anticipated take threshold an overestimation of risk, thereby unnecessarily burdening OHV use through overly conservative annual consultation triggers.

For example, the HCP explicitly states that intensive surveys have not yet been conducted for SWPT and that "very little is known about WSF in the HCP area." Thus, the HCP's take quantification relies on worst-case scenario estimations or extrapolations from limited data, making the quantified take highly speculative and potentially flawed. The REIR does not adequately address how this approach to take reduction impacts OHV recreation.

Response to Comment O5-6

CDPR acknowledges that documented take of SWPT, CRLF, and WSF is rare or absent and that take estimates for these species are based on worst-case scenarios. As a result, the estimation of take is considered a worst-case scenario and is not expected to occur in most years, if at all. Although unlikely, if annual take numbers approach worst-case scenario for any life stage of these species during any one calendar year, CDPR will initiate consultation with USFWS to identify additional management activities that can be implemented. See HCP sections 4.5.2, 4.6.2, and 4.7.2 for more information.

Consultation with USFWS would not necessarily result in restrictions to OHV recreation access. CDPR does not propose any new projects that would adversely impact access to coastal recreation; see response to comment O5-5 above.

**Comment O5-7**

D. HCP Would Create Unnecessarily Large Buffers Around Least Tern Nests, and the REIR Fails to Analyze the Impact of Such Buffers on OHV Recreation

Another example of the HCP's tendency to overprotect species at the expense of recreation is the proposal to create and maintain buffers of 984 feet around least tern nests in the Open Riding

Area (ORA). (See HCP Appendix F [Management Actions – Open Riding Area Nest Buffer Fencing].) There is no evidence that such large buffers are necessary to protect nesting adult terns, their eggs or chicks, or fledglings. In short, the continued use of expansive buffers is scientifically unjustified, especially since the HCP's own monitoring (Appendix G) confirms the high success of focused predator management. The REIR does not adequately evaluate the impact that the proposed nest buffers will have on OHV recreation.

Response to Comment O5-7

The CLTE buffer is a recommendation from CDFW from the Biodiversity Management Plan and is intended to be an interim step until an NCCP is prepared. Daily SNPL and CLTE monitoring in the HCP area indicates a 330-foot buffer has effectively minimized motorized recreation disturbance to nesting CLTE. This will thus be the minimum buffer distance unless, in consultation with Wildlife Agencies, best available site-specific information indicates a different buffer is appropriate (see HCP section 4.4.1.1.1).

**Comment O5-8**

E. HCP and REIR Rely on Flawed Model for Establishing Habitat Suitability Values and Species Population Objectives

One of the major changes between the 2020 draft HCP and the 2025 version under review here is the population objective for Western snowy plover. In 2020, the objective was 155 breeding adults; in 2025, the objective has been increased to 180 breeding adults. This shift is based on Habitat Suitability Values (HSV) from MacDonald et al (2010). The HSV model, however, excluded key biotic variables like vegetation cover and prey availability, which the HCP itself acknowledges have a substantial influence on site occupancy and productivity. Relying on a model that intentionally omitted key biological variables to establish a core population objective weakens the scientific foundation of the plan's conservation goals. The REIR fails to adequately evaluate how use of this flawed HSV model affects OHV recreation at the SVRA.

Response to Comment O5-8

The previous objective of 155 adult SNPL individuals was based on *The Recovery Plan for the Pacific Coast Population of the Western Snowy Plover* (USFWS 2007), calculated by the portion of the shoreline length in the Pismo Beach/Nipomo Dunes (Unit CA-83) within the HCP area. Applying the habitat suitability values developed by MacDonald et al. (2010) resulted in a Management Potential Breeding Number of 155 adult SNPL for the HCP area (HCP Table 5-1). This outcome is the same as the analysis produced based solely on shoreline length, resulting in 155 breeding adult SNPL as a population objective. However, because the adult breeding trends in the HCP area over the last 10 years have exceeded 155 adult SNPL individuals (HCP Table 3-8), the Service and CDPR determined 180 breeding adult SNPL provides a more accurate biological representation of breeding potential in the HCP area and thus will be the population objective for the HCP. See HCP section 5.2.1 for more information.

Also see Master Response 1: HCP Purpose and ITP Issuance Requirements regarding species targets.

**Comment O5-9**

F. The REIR's Alternative Analysis Violates CEQA, as It Fails to Consider Any Alternative That Would Guarantee Increased OHV Opportunities – Or At Least No Net Loss of OHV Opportunities – at ODSVARA

The REIR's alternative discussion is unnecessarily truncated, as it does not consider any alternative that maintains or expands ODSVRA's capacity to accommodate motorized recreation. Instead of exploring such an alternative, the REIR indicates that future expansion of OHV use areas, if it is to occur at all, will be contingent on highly-aspirational biological objectives that may never be reached, regardless of OHV use at the park. In failing to evaluate alternatives that expand or at least prevent loss of OHV opportunity – something expressly requested by OHV stakeholders– the REIR violates CEQA as well as the OHMVR Act's mandate to maximize OHV recreation if doing so can be accomplished without substantially undermining resource conservation goals.

Response to Comment O5-9

CEQA Guidelines section 15126.6(f) states that an EIR shall describe a range of reasonable alternatives to a project or location of the project that would feasibly attain most of the basic project objectives but would avoid or substantially lessen any of the significant effects of the project. Under the HCP, CDPR would largely continue existing operations and maintenance activities at Pismo State Beach and Oceano Dunes SVRA. CDPR proposes new project activities that do not involve any changes to the established camping or visitor limits established by CDP 4-82-300, nor do they reduce areas available for recreational use. For these reasons, the project would not substantially limit, reduce, or interfere with established coastal recreation opportunities in Pismo State Beach and Oceano Dunes SVRA. All recreational impacts of the proposed HCP are found to be less than significant or beneficial (see EIR Volume 1 section 8.3.2); therefore, project alternatives to reduce impacts on recreation are not proposed.

CDPR has a mandate to balance the need to protect California's natural resources, while providing recreational access to the parks. See Master Response 3: HCP with Mission and Mandates for more information.

**Comment O5-10**

G. The REIR Fails to Identify Adequate Measures to Mitigate the HCP's Impacts on OHV Recreation

The REIR is legally flawed because it does not provide mitigation measures to ensure that the HCP and its focus on protecting listed species does not erode or frustrate sustained and predictable OHV access.

Response to Comment O5-10

CDPR does not propose any new projects that would adversely impact access to coastal recreation; see response to comment O5-5 above. Also see Master Response 3: HCP with CDPR Mission and Mandates for information on accommodating recreation and conservation.

**Comment O5-11**

III. CONCLUSION

The HCP's approach to take reduction at the ODSVRA relies heavily on speculative take estimates and overly conservative species protection measures. As a result, the HCP has the potential to undermine the legislative purpose of the park, which is to provide OHV recreation to the general public. The REIR does not adequately analyze this significant impact; nor does the REIR develop alternatives or mitigation measures for reducing this impact to a less than significant level. For this reason and others described in this letter, the REIR fails to satisfy CEQA and must be revised.

Response to Comment O5-11

See responses to comments O5-1 through O5-10 above.

### 3.1.10 Comment Letter O6. Friends of Oceano Dunes

#### Comment O6-1

Neither State Parks nor the U.S. Fish and Wildlife Service has any authority to increase the western snowy plover ("plover") "breeding potential" standard of 155 breeding pairs to 180 breeding pairs. The result of that unauthorized action is an unauthorized reduction of acreage for OHV recreation and camping.

Response to Comment O6-1

The HCP's goals and objectives are based on species Recovery Plans, 5-year Reviews, expert opinion, scientific literature, DPR species-specific monitoring data, amount and quality of habitat for each species in the HCP area, and site-specific conditions (e.g., OHV and other recreational use). See Master Response 1: HCP Purpose and ITP Issuance Requirements for more information and HCP section 5.2.1. Also see Master Response 3: HCP with CDPR Mission and Mandates regarding accommodating both recreation and conservation and further discussion in response to CBD comment O4-15 on reducing the impact of take to the maximum extent practicable.

CDPR does not propose any new projects that would adversely impact access to coastal recreation. New proposed or potential future projects subject to CDPR approval would benefit recreation access by developing new or improving existing facilities (i.e., reduction in seasonal exclosures [CA-50], limited trail riding [CA-42]), see HCP sections 2.2.5.3 and 2.2.5.11 and EIR Volume 1 sections 2.4.2.2 and 2.4.2.3 for more information. CA-50 and CA-42 (if implemented) are expected to result in a net gain in OHV recreation access compared to existing conditions.

#### Comment O6-2

State Parks needs to start working for the benefit of OHV recreation and camping while truly balancing environmental protection instead of placing environmental concerns on a pedestal to the repeated detriment of the very purpose of the park.

State Parks is failing to meet the needs of the off-roading community as required by Public Resources Code ("PRC") §§ 5090.02(c)(1) and 5090.43(a). That statute mandates that existing OHV areas be expanded, added to, and managed for long-term motor vehicle recreation. The statute also mandates that the OHMVR Program supports motorized off-highway access to non-motorized recreation opportunities. State Parks repeatedly places too great an emphasis on conservation despite the Legislature's mandate to support OHV recreation. Within the SVRA presently, only about 16 percent of the total 5,000 acres is open to OHV recreation. That does not support OHV recreation to the "fullest appropriate public use," and makes a mockery of the Legislature's command.

Response to Comment O6-2

In its proposed HCP, CDPR notes that its mandate to balance the need to protect California's natural resources, while providing recreational access to the parks, requires the development of sound management strategies that are based on the best available scientific, demographic, and economic information (HCP section 1.1). Compliance with applicable regulatory programs can be achieved while allowing continuance of motorized recreation. See Master Response 3: HCP

with CDPR Mission and Mandates for information on accommodating recreation and conservation for more information.

Currently, 1,138 acres of the 5,005 HCP area are open seasonally to OHV recreation (HCP section 2.2.1). Most of the HCP area (4,130 acres) is open to non-motorized recreation and is not restricted only to conservation. As stated in response to comment O2-1 above, CDPR does not propose any new projects that would adversely impact access to coastal recreation and new proposed or potential future projects subject to CDPR approval would benefit recreation access overall.

**Comment O6-3**

*Overall:* The HCP discusses legal limits of vehicles and camping authorized by the certified LCP and CDP, but then indicates State Parks has "administratively reduced" those limits, whatever that means. Friends questions whether State Parks has carte blanche legal authority to "administratively reduce" activity authorized by the LCP and CDP, or whether legal authority exists for the reductions of vehicles and camping to date. State Parks appears to have imposed the reductions beyond what is required by the SVRA statute and the San Luis Obispo County Air Pollution Control District's Stipulated Order of Abatement (and associated air quality rules), without any legal basis for doing so. State Parks fails to specify or identify what legal authority authorizes "administrative reductions" beyond what is legal required by law.

The administrative reductions also create confusion in the HCP. What level of activity is covered by the HCP? It is the maximum legally authorized by the LCP and CDP, or is it only the limits under the "administrative reductions"?

Response to Comment O6-3

Oceano Dunes SVRA operates consistent with the existing CDP 4-82-300, as amended. Amendment A5 of CDP 4-82-300, which was approved in 2001, established the following daily limits on vehicles within Oceano Dunes SVRA: up to 2,580 street-legal vehicles, 1,000 street-legal vehicles for camping, and 1,720 OHVs. Due to installation of fencing for dust control that closed off over 48 acres of prime camping area (see HCP section 2.2.5.5) and the 2021 temporary year-round closure of the 6, 7, 8, and Boneyard Exclosures in effect as of summer 2025, CDPR has administratively reduced daily camping permits to 500. Camping numbers in future years adhering to CDP 4-82-300 A5 limits could be higher, which will reflect actual levels of past use. The HCP anticipates the Southern Exclosure area will return to seasonal operation if such operation is consistent with the requirements of other programs. See HCP section 2.2.1.1 for more information. The HCP will not affect the daily limits on vehicles established by the CDP.

**Comment O6-4**

The HCP discusses the Oceano Dunes Biodiversity Management Plan. Is there any significance to the California Coastal Commission's (CCC) refusal to accept this plan?

The HCP should discuss this.

Response to Comment O6-4

Since 2021 CDPR has collaborated with CDFW on a Biodiversity Management Plan (BMP; CDFW 2021), which addresses certain aspects of motorized recreation within the SVRA and associated resource management considerations. The BMP is not a permitting vehicle but provides CDFW's recommendations for measures to protect SNPL, CLTE, aquatic resources,

and listed plants, serving as an interim approach to managing species and habitats during the development of an NCCP. BMP measures are noted in the HCP where relevant.

The BMP does not affect the CDP and does not require approval from the Coastal Commission.

**Comment O6-5**

p. xix: states that "The approximately 1,208-acre portion of the HCP area open to vehicles." The HCP, corresponding environmental document and the soil conservation plan are inconsistent on the total riding area acreage. Friends requests a detailed acreage analysis Identifying original boundary and all changes to date.

Response to Comment O6-5

As noted on page xix of the HCP, the amount of the HCP area open to OHV recreation changes in size based on seasonal restrictions. The 65-acre corridor along the shoreline from Grand Avenue to Post 2 only allows street-legal vehicles, e.g., vehicles equipped and licensed for use on public roads and is closed to camping. Street-legal vehicles are allowed along up to approximately 5.3 miles of beach, from the Grand Avenue entrance to the southern boundary of the open riding area (approximately 0.4 miles south of Post 8). OHVs and camping are only allowed south of Post 2 in the open riding area.

HCP Table 2-1 and EIR Table 2-1 summarize the existing land uses in the HCP area. The open riding area size in the tables include approximately 306 acres of riding area seasonally closed March 1 through September 30 for SNPL and CLTE nesting (Southern Exclosure). Note that in 2021 CDPR administratively closed this area year-round temporarily in response to now concluded CDP permitting and litigation. The HCP anticipates the area will return to seasonal operation, consistent with actual past use, if such operation is consistent with the requirements of other programs (see HCP sections 2.2.1.1 and 2.2.5.5). CDPR will implement shoreline closures as needed in the 48-acre foredune area to protect nesting SNPL and CLTE chicks. The open riding area available to camping is 1,134 acres due to year-round closure of foredune alleyways (transportation corridors) to camping.

The Guadalupe-Nipomo Dunes Complex in general, and the HCP area specifically, has been a popular recreation destination for more than 100 years. Early photographs depict families enjoying the beach and dunes in horse-drawn carriages and bicycles, and motorized vehicles are known to have been driven on the beach as early as 1906 (OHMVR Commission 2014). Prior to approximately 1975, most of the land at and in the immediate vicinity of present-day Oceano Dunes SVRA was open to all forms of recreation, including vehicular recreation. At present, the area open to vehicular recreation and camping is a little over 1,200 acres. See EIR Volume 1 section 8.2.3.3 for more information.

**Comment O6-6**

p. xx: "Grand Dunes Trail" is not defined.

Response to Comment O6-6

The Grand Dunes Trail is an informal path through the dune area south of Grand Avenue (see HCP section 2.2.1.3 and HCP Map 4).

**Comment O6-7**

p. 1-4: the HCP states: "The Phillips 66 leasehold lies between the open riding area and communities east of Oceano Dunes SVRA; it is closed to all visitors. Oceano Dunes District

manages the leasehold area (e.g., maintains fences and manages resources), as needed. This area can be used for emergency access. Phillips 66 maintains the road through the leasehold property to ensure access for pipeline maintenance." There is no leasehold. That statement needs to be corrected to reflect the precise legal status of those lands.

Response to Comment O6-7

CDPR has an agreement and grant of development rights on the Phillips 66 land west of the railroad, which is commonly referred to as a leasehold in shorthand. Because of this legal interest in the Phillips 66 land, it is included in the 1975 General Development Plan and within the HCP area.

**Comment O6-8**

p. 1-9: now that the CEQ regulations have been withdrawn, what is the impact of that federal action on the NEPA analysis in this case?

Response to Comment O6-8

This comment is related to the NEPA process and does not relate to the HCP or the EIR. CEQ NEPA regulations found at 40 CFR 1500 *et seq.* referenced by the commenter were rescinded in April 2025 and do not govern the USFWS's NEPA process or determinations.

**Comment O6-9**

p. 1-11: the discussion of the "General Development Plan" needs to recognize that plan has been amended

Response to Comment O6-9

Section 1.5.9 of the HCP does acknowledge that the General Plan has been amended, near the top of page 1-12:

> The General Development Plan has been amended twice. In 1982 it was amended to allow for the Grover Beach Lodge at Grand Avenue (CDPR 1982). It was amended again in 1994 (CDPR 1994a) to reflect the results of the Pismo [Oceano] Dunes SVRA Access Corridor Project, which concluded that the Grand Avenue and Pier Avenue entrances were the Environmentally Preferred alternative, together with the staging area that remains in use today (CDPR 1994b).

**Comment O6-10**

p. 2-3: sometimes the HCP says 2 million people visit the park annually, sometimes it uses the 1.5 to 1.9 million number. Which is correct?

Response to Comment O6-10

Although an estimated 1.5 to 1.9 million people visit the Oceano Dunes District every year as stated in HCP section 2.2.1 (page 2-3), visitation fluctuates somewhat from year to year. See EIR Volume 1 section 8.2.2 for more information.

**Comment O6-11**

Table 2-1: The HCP, corresponding environmental document and the soil conservation plan are inconsistent on the total OHV riding area acreage

Response to Comment O6-11

The comment does not explain how the HCP, corresponding environmental document and the soil conservation plan are inconsistent on the total OHV riding area acreage. The OHV riding area acreage is explained in detail in response to comment O6-5 above.

**Comment O6-12**

Table 2-1: there is no “leasehold” with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

Response to Comment O6-12

See response to comment O6-7 above.

**Comment O6-13**

Table 2-1: the HCP and corresponding environmental document are inconsistent on the precise size of the 300-acre exclosure

Response to Comment O6-13

Each year, from approximately March 1 through September 30 during the SNPL and CLTE breeding season, CDPR encloses approximately 300 acres of Oceano Dunes SVRA open riding area plus approximately 68 acres in North Oso Flaco Exclosure within a 6-foot-tall seasonal exclosure (i.e., nonclimb fence) to prevent terrestrial predators, vehicles, and humans from entering protected nesting and chick-rearing habitat. The size of the 300-acre Exclosure can fluctuate slightly from year to year based on changes in topography, particularly at the Boneyard and 8 Exclosure. See HCP section 2.2.2.1 for more information.

**Comment O6-14**

p. 2-9: HCP needs to define "the windy season"

Response to Comment O6-14

HCP section 2.2.1.9 (page 2-12) says that the windy season lasts from the middle of March to the middle of July.

**Comment O6-15**

p. 2-11: there is no “leasehold” with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

Response to Comment O6-15

See response to comment O6-7 above.

**Comment O6-16**

p. 2-16: "bumpout" fencing should be halted. Any nest that is feared to be disturbed should be relocated for captive rearing as described in section 2.2

p. 2-17: "single nest exclosure" should be stopped. Any nest that is feared to be disturbed should be relocated for captive rearing as described in section 2.2

p. 2-19: State Parks should stop closing OHV open riding areas, unless the standards of PRC § 5090 et seq. must cease. Any nest that is feared to be disturbed should be relocated for captive rearing as described in section 2.2

Response to Comment O6-16

Nest bumpouts and single-nest exclosures are part of the existing natural resources management program in the HCP area and are not new covered activities authorized by the ITP or analyzed in the EIR. See Master Response 6: CEQA Baseline and Scope for more information.

Captive rearing of SNPL eggs or chicks is considered take and would only be utilized if SNPL chicks or eggs are determined to be vulnerable to a covered activity that is not related to covered species management activities despite CDPR's efforts to protect eggs and/or direct chicks back to protection of a closed area and reunite them with attending adults. See HCP section 2.2.2.1.2, page 2-21 for more information.

SNPL nests in the HCP area are typically found in the Southern Exclosure and Oso Flaco during the breeding season. Specifically, most SNPL nests have been found in North Oso Flaco Exclosure, South Oso Flaco, 6 Exclosure, 7 Exclosure, 8 Exclosure, and Boneyard Exclosure (HCP Map 11a-d). Only 43 nests have been found outside the Southern Exclosure and Oso Flaco from 2005 to 2023, 21 of which were found in 2020 when the area was closed to vehicles and camping. Therefore, bumpouts and single-nest exclosures do not significantly or regularly impact OHV recreation in the HCP area. See HCP section 3.3.1.8 for more information.

**Comment O6-17**

p. 2-22: cite or provide all "substantial evidence [that] exists indicating that human activities affect the type number and activity pattern of predators"

Response to Comment O6-17

While the HCP does not cite specific research, numerous past studies have found that human activities significantly alter the type, number, and behavior of predators, decreasing the diversity of specialized predators while increasing the presence of generalist predators (e.g., raccoons, foxes, corvids), increasing nocturnality, and shifting their diets towards anthropogenic food sources. The HCP predator management program does not rely only on past studies, but on over 20 years of monitoring and managing the predators specifically found in the HCP area.

**Comment O6-18**

p. 2-26: State Parks must define the natural state of the Oceano Dunes in a way that is fully supported by historical and scientific evidence. Historical articles, maps and descriptions document the Oceano Dunes as an active sand dune system with historically sparse vegetation. The Oceano Dunes have always been a windy environment and prone to sand movement. The dunes are always changing, like a slow-moving river of sand across the landscape…that is how the Nipomo Mesa was created!

Therefore, the practice of "re-establishing native plants in areas where exotic plants have been removed" is unacceptable, unscientific and changes the natural environment without justification. Non-native plants should be removed and the dunes returned to their barren natural state as they have existed long before OHV recreation was introduced here

p. 2-27: Habitat restoration assumes you have defined what natural state existed at what time. Provide all evidence and supporting information on how State Parks has defined the "natural state" of the Oceano Dunes.

p. 2-28: "restoration projects" are not defined to a baseline natural state

p. 2-29: "enhance habitat characteristics" is not defined to a baseline natural state

Response to Comment O6-18

The words "natural state" are used only once in the HCP, and not in the context of listed plant management (CA-15) or the habitat restoration program (CA-16). HCP section 1.3.2 states: "Almost 2,200 acres of Oceano Dunes SVRA outside of the open riding area are maintained in a largely natural state." In this context, the HCP indicates that the 2,200 acres of the Oceano Dunes SVRA outside of the open riding area are not developed or subject to substantial human intervention, although much of the area is open to non-motorized recreation.

Listed plant management (CA-15) and the habitat restoration program (CA-16) are part of existing park operations in the HCP area, with the exception of propagation and outplanting of listed plant species (potential future activity under CA-15), dune slack restoration (new activity under CA-16), and the California Vegetation Treatment Program (potential future activity under CA-16). Existing park operations in the HCP area are part of the environmental setting and are not new activities analyzed in the EIR; see Master Response 6: CEQA Baseline and Scope for more information.

Listed plant management (CA-15) occurs in known and potential listed plant habitat and is intended to improve habitat for listed plants, not change the habitat back to what may have existed at some previous point in time. See HCP section 2.2.2.1.5 for more information.

CDPR has implemented the habitat restoration program (CA-16) since 1989 to control the sand movement within vegetated areas of the dunes and maintain the integrity of native dune and riparian habitats located within or adjacent to the open riding area of Oceano Dunes SVRA and Pismo State Beach. CDPR performs restoration activities to enhance the habitat characteristics of existing vegetation islands present within Oceano Dunes SVRA, as well as to protect sensitive habitat areas (such as Oso Flaco Lake) and critical park infrastructure (such as access roads) from encroaching sand dunes. Most of the installed vegetation has been planted on sandy areas adjacent to existing vegetation islands or other vegetated areas in the southern half of Oceano Dunes SVRA. See HCP section 2.2.2.2 for more information.

CDPR acknowledges that the HCP area is in a windy environment prone to sand movement. HCP section 3.1.5 describes the HCP area habitats and states:

> The sandy beaches in the HCP area are a harsh environment where most plants are unable to survive. Located behind them are the dunes, which may be divided into two zones—foredunes and backdunes—characterized by their location and dominant vegetation. Foredunes, which begin at the high tide line and include vast natural areas of open sand sheet, are characterized as low wind-deposited dunes that are sparsely vegetated with the hardiest of dune stabilizing plants. When vegetation can gain a foothold, only low-growing plants with deep root systems can survive, such as sand verbena and beach bur. The strong winds, storm waves, salt spray, lack of freshwater, nutrient-poor substrate (i.e., sand), and alternating periods of sand burial and erosion make this area uninhabitable for other types of plants. The backdunes, located behind the foredunes, are more stabilized and vegetated than the foredunes due to less wind and other erosive forces.

**Comment O6-19**

p. 2-37: Grover Beach Lodge must provide space for OHV users to "air up and down" while entering and exiting the beach. Currently accommodation is being made for equestrians to park, yet those users pay nothing to use the SVRA

Response to Comment O6-19

The comment expresses an opinion on the design of the Grover Beach Lodge but is not a comment on the HCP or EIR. The HCP includes the Grover Beach Lodge and Conference Center as a covered activity (CA-38) but is not proposed or under review as part of the HCP. The potential impacts of CA-38 were analyzed separately in the Grover Beach Lodge EIR (SWCA Environmental Consultants 2012).

**Comment O6-20**

p. 2-40: "mass emissions from the Oceano Dunes SVRA" is misleading because it includes ALL particles from the ocean! This needs to be corrected

Response to Comment O6-20

The Dust Control Program is part of existing park operations, except for future dust control activities described in EIR Volume 1 section 2.4.2.3. Existing park operations in the HCP area are part of the environmental setting and are not new activities analyzed in the EIR; see Master Response 6: CEQA Baseline and Scope for more information.

The comment cites text related to the requirements of the original 2018 SOA, which the Dust Control Program responds to. The Draft HCP includes dust control activities as a covered activity (CA-44), but dust control activities are not proposed or under review as part of the HCP. See Master Response 8: Dust Control Program (CA-44) for more information, including regarding the nature and source of dust emissions.

**Comment O6-21**

p. 2-45: reduction of the Post 6 exclosure can be accomplished while still meeting the recovery goals by maintaining the 155 breeding potential (not 180 breeding pairs). The plover breeding potential should remain at 155 and not arbitrarily increase to 180. The least tern goal also should not be increased

It is not reasonable to arbitrarily inflate the goals at the expense of OHV recreation and camping. Doing so when there is no federal legal requirement to do so is inconsistent with PRC § 5090 et seq.'s command to "expand wherever possible" and utilize the lands to their "fullest appropriate public use."

Response to Comment O6-21

See Master Response 1: HCP Purpose and ITP Issuance Requirements regarding species metrics and responses to comments O5-8 and O6-1 above. Also see Master Response 3: HCP with CDPR Mission and Mandates regarding accommodating both recreation and conservation and further discussion in response to CBD comment O4-15 on reducing the impact of take to the maximum extent practicable.

**Comment O6-22**

p. 2-45: there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

Response to Comment O6-22

See response to comment O6-7 above.

**Comment O6-23**

p. 3-1: the "natural history of each of the covered species" has not been defined

Response to Comment O6-23

The natural history of each of the covered species is described in sections 3.3 and 3.4 of the HCP.

**Comment O6-24**

p. 3-3: there is no “leasehold” with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

Response to Comment O6-24

See response to comment O6-7 above.

**Comment O6-25**

p. 3-4: State Parks’ mapping of existing vegetation in 2022 does not adequately define the natural state of the dunes. The natural state of the dunes is documented in historical pictures and documents of mostly barren sand dunes. Human planting of vegetation a 100 years ago should not be recognized as "natural"

Response to Comment O6-25

CDPR mapped vegetation in the HCP area in 2022 and updated mapping in 2024 to document existing habitats in the HCP area, described in HCP section 3.1.5, not to define the state of the dunes that may have occurred 100 years ago. CDPR acknowledges that sand dunes are often barren. HCP section 3.1.2 states: “The HCP area is dominated by sand dunes; thus, beach sand is the dominant soil in the HCP area, much of which is barren of vegetation.” Past planting of vegetation in the HCP area as part of the restoration program or for dust control are part of the environmental setting. See Master Response 6: CEQA Baseline and Scope, HCP sections 2.2.2.2 and 2.2.5.5, and response to comment O6-18 for more information.

**Comment O6-26**

p. 3-4: there is no “leasehold” with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those land

Response to Comment O6-26

See response to comment O6-7 above.

**Comment O6-27**

p. 3-20: states there have been 43 nests in the open riding area over an 18-year period, or an average of 2.3 nests per year. That makes take a very remote possibility within the riding area. If you delete the year 2020 aberration, the average drops to less than 1 nest per year. Take is an extremely remote possibility.

Response to Comment O6-27

SNPL take estimates in the HCP are not limited to only nests in the open riding area but include:

- Take of individual SNPL adults, juveniles, chicks, and eggs caused by park operations, recreation, and other activities not related to covered species management.

- Take of SNPL caused by covered species management-related activities that are specifically implemented to protect nests and individuals from public activity (i.e., fencing, single-nest exclosures). Impacts from management activities related to monitoring and protecting SNPL (recovery activities) are referenced in Appendix C and will be authorized under the 10(a)(1)(A), Recovery Permit (TE-815214-10).

Given that both covered activities and the conservation program described in the HCP are largely ongoing, incidental take estimates are based primarily on past take data, with the exception of the take associated with dust control activities (CA-44) and SNPL captive rearing (CA-12b). See HCP section 4.3.2 and Master Response 2: HCP Proposed Levels of Permitted Take for more information.

**Comment O6-28**

p. 3-22: claiming that the dunes are "highly degraded by historical land uses" is not accurate. Further, State Parks has failed to define the “natural state” of the dunes…which is mostly barren. It is unclear how barren sand has been degraded.

Response to Comment O6-28

The comment cites text that defines certain areas as tertiary habitat for SNPL due to historical land uses (e.g., recreation on beaches, indirectly degraded by adjacent urban development) in section 3.3.1.8 of the HCP. The section defines habitat suitability for SNPL in the HCP area and is not intended to define the natural state of the dunes. Also see responses to comments O6-18 and O6-25 above.

**Comment O6-29**

p. 3-21 and 3-22, see also p. 4-4 and Map 25: states as follows: “Tertiary habitat providevery little of the physical and biological features to support behavioral activities such as breeding, foraging, and roosting. These features (or the location of these features) are assumed to provide marginal or low-quality habitat because they are generally located far from the shore, contain only low-quality habitat features (e.g., vegetated dunes), or have been highly degraded by historical land uses (e.g., recreation on beaches, indirectly degraded by adjacent urban development). SNPL are anticipated to rarely nest in tertiary habitat or otherwise use this habitat for foraging and roosting. The portion of Pismo Beach located north of Addie Street, including the Pismo Pier (Map 10), was identified as tertiary habitat, since the habitat in this area has been rendered unsuitable by historic human activity and adjacent urban development. In addition, tertiary habitat was defined as all other potentially suitable habitats in the HCP area not mapped as primary or secondary.”

In other settings, that reference has led to confusion among biologists and nonbiologists alike, since such area is not normally protected habitat. The associated EIR also discusses “tertiary habitat” as areas where the birds NEVER or almost NEVER nest. If that is the case, what is the value of identifying such areas? Is there any scientific literature supporting such a designation if the birds essentially never nest there? If the birds NEVER or almost NEVER nest there, isn’t more of a fluke or aberration rather than viable habitat? “Tertiary habitat” is not protected under federal or state law and it serves no purpose to identify such areas. It is not part of any critical habitat area.

The agencies are using a habitat standard that is not supported by statute, regulation or science and are exceeding their respective authority in doing so.

Table 3-2: references “tertiary habitat” for the plover. But it doesn’t explain whether that is a legitimate or accepted biological concept for those birds specifically. In other settings, that depiction has led to confusion among nonbiologists, since such area is not normally protected habitat. The associated EIR appears to discuss “tertiary habitat” as areas where the birds NEVER or almost NEVER nest. If that is the case, what is the value of identifying such areas? Is there any scientific literature supporting such a designation if the birds essentially never nest there? If the birds NEVER or almost NEVER nest there, isn’t more of a fluke or aberration rather than viable habitat? “Tertiary habitat” is not protected under federal or state law and it serves no purpose to identify such areas. It is not part of any critical habitat area.

The Table shows that State Parks only found 14 nests (near the edge of the habitat) in nearly a 20-year period. As such, what purpose can be served by identifying more than 3,500 acres as such habitat?

The agencies are using a habitat standard that is not supported by statute, regulation or science and are exceeding their respective authority in doing so.

Table 3-9, see also Map 10, Map 12 and Map 26: shows that no California Least Tern has ever nested in “tertiary habitat.” If that is the case, what is the value of identifying such areas? Is there any scientific literature supporting such a designation if the birds never nest there? “Tertiary habitat” is not protected under federal or state law and it serves no purpose to identify such areas. It is not part of any designated critical habitat area.

The agencies are using a habitat standard that is not supported by statute, regulation or science and are exceeding their respective authority in doing so.

Response to Comment O6-29

The purpose of the HCP is not to address “protected” habitat but rather to support USFWS issuance of an ITP authorizing incidental take within the HCP area; see Master Response 1: HCP Purpose and ITP Issuance Requirements. The HCP identifies SNPL and CLTE primary, secondary, and tertiary habitat because not all potential SNPL and/or CLTE habitat will support the same numbers and densities of SNPL and/or CLTE. The identification of habitat as primary, secondary, and tertiary reflects the expected level of use of these habitats by SNPL and/or CLTE and allows the HCP analysis to evaluate the effect of impacts. For example, primary habitat would support a higher density of nesting SNPL and/or CLTE than secondary habitat, which could support a higher density of nesting SNPL and/or CLTE than tertiary habitat. See HCP sections 3.3.1.8 and 3.3.2.8 for more information.

Tertiary habitat was identified to allow the HCP to cover all activities in the HCP area. Although SNPL and CLTE don’t typically use tertiary habitat for nesting, they may roost and forage in tertiary habitat. Designating the area as tertiary habitat allows any potential impacts on SNPL and CLTE in those areas to be covered by the HCP and authorized by the ITP, even if SNPL and CLTE use these areas infrequently.

The USFWS is the regulatory authority under FESA Section 7 to assess impacts to critical habitat from all proposed ITP covered activities identified in the HCP. The EA for the Oceano Dunes District HCP concludes the impacts on critical habitat from all ITP covered activities, which includes the project activities evaluated in this EIR, would not be significant. See Master Response 7: Reduction of Boneyard and 6 Exclosures (CA-50).

**Comment O6-30**

p. 3-65: there is no “leasehold” with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

p. 3-88: there is no “leasehold” with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

p. 3-90: there is no “leasehold” with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

Response to Comment O6-30

See response to comment O6-7 above.

**Comment O6-31**

p. 4-5: "Any nests found in the riding area will be quickly protected with symbolic or wire fencing and a large single-nest exclosure will be installed as soon as possible, as appropriate, thus reducing the likelihood of a vehicle striking a SNPL or crushing a nest." Any nest that is feared to be disturbed should be relocated for captive rearing as described in section 2.2

Response to Comment O6-31

See response to comment O6-16 above.

**Comment O6-32**

p. 4-6: the AMM 22 number should be increased to ensure reproductive success. Why limit that to a small number when the offsite rearing has nearly a 100% success rate. AMM 22 numbers should be increased by a factor of 5 to ensure success, please change to "60 eggs/20 nests and 60 chicks/20 broods". Likewise change the notification threshold to "40 eggs and 40 chicks." State Parks should use the adaptive rearing process to the maximum extent possible in order to ensure success while allowing continued OHV recreation and camping.

Response to Comment O6-32

CDPR does not propose to increase the AMM 22 number of SNPL eggs or chicks captured for captive rearing because this activity is considered take and is only utilized if eggs or chicks likely would not survive if they are not captured for captive rearing. See response to comment O6-16 above and HCP sections 2.2.2.1.2 and 4.3.2 for more information.

**Comment O6-33**

p. 4-6: provide the Mad River biologist study from 2005 that is referenced.

Response to Comment O6-33

The Mad River study from 2005 is cited in the HCP bibliography (HCP Chapter 10) and is incorporated by reference.

**Comment O6-34**

p. 4-6: delete "Although unlikely, it is still possible that a SNPL roosting or foraging at night could be struck by a vehicle, especially during the non-breeding season." or include all possible but unlikely scenarios…like being hit by park ranger, lightning, frisbees, UAVs…or any other potential harm. The existing language reflects an anti-OHV bias.

Response to Comment O6-34

HCP Chapter 4 Potential Biological Effects/Take Assessment is limited to the potential biological effects of HCP covered activities on HCP covered species. The text cited in the comment is part of the discussion of the potential biological effects of motorized recreation (CA-1) on SNPL (HCP section 4.3.1.1.1). The effects analyses in HCP Chapter 4 discusses all aspects of covered activities that could possibly affect the covered species, including direct and indirect effects and quantitative and qualitative effects. See HCP sections 4.1 and 4.2 for more information. Potential biological effects on covered species that are unlikely are also included to ensure a thorough analysis.

**Comment O6-35**

p. 4-7: explain how vehicles can disturb the plover, but not disturb or deter predators

Response to Comment O6-35

As stated in response to comment O6-34 above, HCP Chapter 4 Potential Biological Effects/Take Assessment is limited to the potential biological effects of HCP covered activities on HCP covered species. Potential biological effects on species not covered by the HCP, including predatory species, are not discussed in the HCP. The HCP supports a request to authorize incidental take of species listed under FESA, and thus only addresses FESA-listed species that could be subjected to incidental take from HCP covered activities (covered species). See Master Response 1: HCP Purpose and ITP Issuance Requirements for more information.

**Comment O6-36**

p. 4-8: "Motorized vehicle recreation may reduce available habitat for SNPL." That statement is confusing given that OHV recreation also may remove invasive species and deter predators, which creates and enhances plover habitat. There needs to be more discussion on the benefits of OHV recreation to the sensitive species

Response to Comment O6-36

OHV recreation, as with other recreation, can disturb SNPL at a level that precludes breeding, foraging, and resting and also poses the risk of direct take. OHV recreation and recreation more generally can increase predation by increasing trash that attracts predators, see, e.g., HCP section 4.3.1.1 under Increased Predators. Additionally, as stated in HCP section 4.10.2.1.1, “motor vehicles are known to inadvertently spread invasive plants (e.g., on tires) by moving seeds or plant segments if they move from one place with invasive species to a less impacted area.” This may occur less often in the HCP area, since areas open to OHV recreation are mostly bare sand or sparsely vegetated. These effects are largely ongoing and not the subject of the EIR’s impact analysis.

In contrast to these adverse OHV effects, HCP section 4.3.1.2.1 also recognizes that large portions of the Southern Exclosure have become less productive as the vegetation and topography have expanded and grown over time, causing reduced open habitat favored by nesting SNPL and CLTE. To address this reduction in habitat quality, CDPR anticipates needing to remove during the non-breeding season the non-native sea rocket and larger dune hummocks in heavily vegetated areas where nesting has declined in the Southern Exclosure. This approach to habitat enhancement is included in the EIR as a potential future activity (section 2.4.2.3).

None of the proposed new activities are expected to increase predation. Of the potential future activities, however, EIR sections 6.4.1.1 and 6.4.1.2 (Cumulative Impacts) note that vegetation

planted or preserved for dust control in primary SNPL and CLTE habitat could lead to steeper hummocks and less open (or wide), sparsely vegetated beach, reducing nesting initiation and success and potentially increasing predation. The Dust Control Program is subject to separate CDPR CEQA review and approval and not the subject of this EIR.

See Master Response 9: Predation for more information.

**Comment O6-37**

p. 4-9: "Specifically, any nests found in the open riding area will be protected with single-nest exclosure with a minimum 100-foot buffer." That needs to be changed to: Any nest found in the open riding area will be collected in accordance with AMM 22.

p. 4-9: "Specifically, any nests found in the open riding area will be protected with single-nest exclosure with a minimum 100-foot buffer." That needs to be changed to: Any nest found in the open riding area will be collected in accordance with AMM 22.

p. 4-9: "Nests in fenced areas but within 100 feet of the open riding area will receive a bumpout." That needs to change to: Any nest found within 100 feet of the open riding area will be collected in accordance with AMM 22.

p. 4-10: "If nests are found in the 48-acre foredune, the area is closed to the public. Finally, additional fencing (i.e. bumpout) will be installed to enlarge the Southern Exclosure or other closed area if necessary, to provide a 100-foot buffer." That needs to change to: Any nest found within 100 feet of the open riding area will be collected in accordance with AMM 22

p. 4-20: " Single-nest exclosures can also pose a risk to incubating adult SNPL because they may increase the likelihood that predators will recognize the exclosure and prey on the attending adults." Eliminate the need for single nest exclosures by collecting in accordance with AMM 22.

Response to Comment O6-37

See response to comment O6-16 above. See also Nesting Outside of Exclosures in Master Response 7: Reduction of Boneyard and 6 Exclosures (CA-50).

**Comment O6-38**

p. 4-27: Please explain "Habitat Restoration"…what is the baseline used to restore to? Please provide historical evidence to support that claim.

Response to Comment O6-38

See response to comment O6-18 above.

**Comment O6-39**

p. 4-31: "The placement of restroom facilities within SNPL breeding habitat reduces the amount of habitat available to SNPL for breeding by precluding them from nesting within the footprint of the structures." You can increase breeding habitat by restoring the 7.5 reveg island to open sand sheet for camping the way it existed before State Parks removed it for a bathroom that it never installed.

Response to Comment O6-39

The removal of the 7.5 reveg island is not proposed in the HCP or analyzed in the EIR. The 7.5 reveg island is part of the environmental setting, see Master Response 6: CEQA Baseline and Scope.

**Comment O6-40**

p. 4-50: add clarification to the East Boneyard discussion highlighting that it is NOT located within designated critical habitat area for the plover.

Response to Comment O6-40

Effects on SNPL critical habitat are not discussed in HCP section 4.3 but are discussed separately in HCP section 4.11.1. The HCP specifically states that East Boneyard lies outside of SNPL critical habitat (HCP section 4.11.1.2).

**Comment O6-41**

p. 4-52: "the HCP ensures that the 6 Exclosure will not be reduced unless specific criteria are met, including obtaining a breeding population size greater than 180 SNPL for 3 consecutive years and a fledge rate of 1.0 fledgling per breeding male over the same period (section 5.2.3)." The habitat suitability values and aerial measures of available potential habitat resulted in a Management Potential Breeding Number of 155 (per pg 5-3) adult SNPL for the HCP area not 180! The passive construction of that sentence seeks to hide the fact that there is no legal basis for moving the goal post. Neither State Parks nor the U.S. Fish and Wildlife Service may arbitrarily select new parameters that are neither required nor authorized by law. If there are changes to the recovery standards or goals, the adopted western snowy plover recovery plan must be amended and re-circulated for public comment.

Response to Comment O6-41

See Master Response 1: HCP Purpose and ITP Issuance Requirements regarding species targets. Also see responses to comments O5-8 and O6-1 above.

**Comment O6-42**

p. 4-52: "Any nests found outside the reduced area of 6 Exclosure in the open riding area will be protected by a single-nest exclosure to provide a minimum 100-foot buffer, thus reducing the likelihood of direct impacts to nesting SNPL." Any nest found in the open riding area will be collected in accordance with AMM 22.

Response to Comment O6-42

See response to comment O6-16 above.

**Comment O6-43**

p. 4-56: AMM 22 numbers should be increased by a factor of 5 to ensure success, please change to "60 eggs/20 nests and 60 chicks/20 broods." Likewise, the agencies should change the notification threshold to "40 eggs and 40 chicks".

Response to Comment O6-43

See response to comment O6-32 above.

**Comment O6-44**

p. 4-210: there is no “leasehold” with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

p. 4-213: there is no “leasehold” with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

p. 4-222: there is no “leasehold” with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

Response to Comment O6-44

See response to comment O6-7 above.

**Comment O6-45**

p. 5-3: " Because the adult breeding trends in the HCP area over the last 10 years have exceeded 155 adult SNPL individuals (Table 3-8), USFWS and CDPR determined 180 breeding adult SNPL provides a more accurate biological representation of breeding potential at ODD and thus will be the population objective for this HCP." Since there is no legal authorization for changing a recovery standard or goal as part of an HCP (rather than changing the adopted recovery plan), State Parks cannot disregard PRC § 5090 et seq. "OHV areas be expanded, added to, and managed to sustain areas for long-term motor vehicle recreation" along with managing to ensure the “fullest appropriate public use.” the agencies may not arbitrarily impose some different and higher "breeding potential"

State Parks repeatedly places too great an emphasis on conservation. Within the SVRA presently, only about 16 percent of the total 5,000 acres is open to OHV recreation.

Response to Comment O6-45

Also see Master Response 1: HCP Purpose and ITP Issuance Requirements and responses to comments O5-8 and O6-1 above regarding species targets.

See response to comment O6-2 above and Master Response 3: HCP with CDPR Mission and Mandates for information on accommodating recreation and conservation.

**Comment O6-46**

p. 5-5: "Habitat restoration in North and South Oso Flaco could improve nesting habitat for SNPL and may provide additional wintering habitat by creating more open beach and/or adjacent foredune areas through the removal of invasive species. With the removal of invasive species and recontouring of the dune areas, SNPL may begin to use these areas for nesting and wintering activities." State Parks has failed to define the “natural state.” State Parks has been inconsistent and arbitrary when removing invasive species and recontouring of the dune areas

Response to Comment O6-46

As cited in the comment, the intent of habitat restoration in North and South Oso Flaco is to improve nesting habitat for SNPL and possibly provide additional wintering habitat by creating more open beach and/or adjacent foredune areas through the removal of invasive species (HCP section 5.2.1). The intention is not to restore the area to a “natural state,” which is not a term used in the HCP in the context of restoration. Also see response to comment O6-18 above.

This habitat restoration referenced in the comment is part of habitat manipulation in the Southern Exclosure, a new activity proposed as part of SNPL and CLTE monitoring and management (CA-12b). See HCP section 2.2.2.1.2 for more information.

The comment does not explain how CDPR is inconsistent and arbitrary when removing invasive species and recontouring dune areas.

**Comment O6-47**

p. 5-6: "Virtually all SNPL nests at Oceano Dunes SVRA will receive some type of fence protection (generally, only those few nests that are not discovered by monitors do not receive some type of fence protection)."

Instead, State Parks should collect all nests in the riding area per AMM 22.

Response to Comment O6-47

See response to comment O6-16 above.

**Comment O6-48**

p. 5-10: Change, "Breeding SNPL population size ≥ 180 for 3 consecutive years, including the year before the 6 Exclosure is reduced in size (SNPL Objective 1.1)." to read "Breeding SNPL population size ≥ 155 for 3 consecutive years, including the year before the 6 Exclosure is reduced in size (SNPL Objective 1.1)."

Neither State Parks nor the USFWS is authorized to impose larger breeding goals

Response to Comment O6-48

See Master Response 1: HCP Purpose and ITP Issuance Requirements regarding species targets. Also see responses to comments O5-8 and O6-1 above.

**Comment O6-49**

Map 3: there is no “leasehold” with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

Response to Comment O6-49

See response to comment O6-7 above.

**Comment O6-50**

Map 3 – should be modified to depict the approximate location of “Old Competition Hill” to distinguish from the current Competition Hill

Response to Comment O6-50

Map 3 is a general map of the park showing current land uses and facilities. The precise location of “Old Competition Hill” is not known and it would not be appropriate to speculate on its location as part of this HCP or the associated EIR.

**Comment O6-51**

Map 6: there is no “leasehold” with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

Response to Comment O6-51

See response to comment O6-7 above.

**Comment O6-52**

Does the proposed take limit for the plover include “indirect” take caused by increased predation that results from dust control measures?

Response to Comment O6-52

See response to comment O6-36. See Master Response 9: Predation for more information. See also Master Response 8: Dust Control Program (CA-44).

**Comment O6-53**

Friends requests a better method that defines take of endangered species to reduce gross errors. Example, there are numerous deaths of WSP and CLT that happen from predator strike or even strike of objects like a fence outside of the riding area…but as soon as it occurs in the riding area the report always documents the carcass in tire tracks leading the reader to assume the death was caused by a vehicle strike with no evidence to support it. Friends requests to be involved in establishing these definitions.

Response to Comment O6-53

CDPR does not assume that all SNPL and CLTE deaths in the open riding area were caused by vehicle strike. HCP section 4.3.2.1.1 states: "From 2001 to February 2024, 83 total dead or injured adult and/or juvenile SNPL were recovered in the areas open to recreation (motorized and/or non-motorized), and some were determined to have been killed or injured by trauma. As a result, these deaths could be attributed to motorized and non-motorized activities, including recreation activities, park operations, fence strikes, or other activities not related to recovery actions." A similar statement is included in HCP section 4.4.2.1.1 for CLTE. Also see Master Response 2: HCP Proposed Levels of Permitted Take regarding SNPL and CLTE take detection methods.

**Comment O6-54**

Page 2-2, Table 2-1, and Notes 4 and 6 – there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

Page 2-3 – there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

Page 2-4 – there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

Response to Comment O6-54

See response to comment O6-7 above.

**Comment O6-55**

Page 2-29 – the official name is "Public Resources Code"

Response to Comment O6-55

Comment noted. Acronyms, abbreviations, and symbols are defined in EIR pages xi-xiv.

**Comment O6-56**

Fig. 2-3 – should be modified to depict the approximate location of "Old Competition Hill" to distinguish from the current Competition Hill

Response to Comment O6-56

Figure 2-3 is a general map of the park showing current land uses and facilities. The precise location of "Old Competition Hill" is not known and it would not be appropriate to speculate on its location as part of this HCP or the associated EIR.

**Comment O6-57**

Fig. 2-3 – Union Oil was acquired by Chevron – the figure should note that when referencing Union Oil inholdings

Response to Comment O6-57

Comment noted. Edits made to Figure 2-3 in EIR Volume 1.

**Comment O6-58**

Fig. 2-3 – there is no "leasehold" with Phillips 66; that reference needs to be corrected to reflect the precise legal status of those lands

Page 2-6 – there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

Response to Comment O6-58

See response to comment O6-7 above.

**Comment O6-59**

Page 4-13 – the EIR states: "In 1983 CDPR and the County entered into an agreement allowing the State to provide "the care, maintenance, and control for the purposes of the State Vehicular Recreation Area and Trail System, of lands under the jurisdiction of Local Agency (CDPR and SLO County 1983). CDPR has operated the La Grande tract area since this agreement. Further, regarding the parcels owned by the County, the agreement authorizes the State to provide "care, maintenance, development, operation, and control of the real property…for the purposes of the State Vehicular Recreation Area and Trail System." While the agreement is in force and effect, the property is to remain accessible for the use and enjoyment of all, subject to the control of the State." It is our understanding that this agreement expired. Is that accurate?

Page 4-30 – discussion of La Grande Tract agreement. It is our understanding that the agreement expired. Is that accurate?

Response to Comment O6-59

While the original 25-year agreement expired, CDPR continues to operate the La Grande tract under the original terms of the agreement with SLO County.

**Comment O6-60**

Fig. 5-4 – there is no "leasehold" with Phillips 66; that reference needs to be corrected to reflect the precise legal status of those lands

Response to Comment O6-60

See response to comment O6-7 above.

**Comment O6-61**

p. 6-5 – discusses the Oceano Dunes Biodiversity Management Plan. Is there any significance in the CCC's refusal to accept this plan?

Response to Comment O6-61

See response to comment O6-4 above.

**Comment O6-62**

Fig. 6-6 – asserts that it depicts "tertiary habitat" for the WSP and California Least Tern. But it doesn't explain what that is, or whether that is a legitimate or accepted biological concept for those birds specifically. In other settings, that depiction has led to confusion among non-biologists, since such area is not normally protected habitat. The EIR appears to discuss "tertiary habitat" as areas where the birds NEVER or almost NEVER nest. If that is the case, what is the value of identifying such areas? Is there any scientific literature supporting such a designation if the birds essentially never nest there? If the birds NEVER or almost NEVER nest there, isn't more of a fluke or aberration rather than viable habitat? "Tertiary habitat" is not protected under federal or state law and it serves no purpose to identify such areas. It is not part of any critical habitat area.

Response to Comment O6-62

See response to comment O6-29 above.

**Comment O6-63**

Fig. 7-1 – does not appear to show the CA-50 boneyard exclosure reduction

Response to Comment O6-63

Figure 7-1 is revised to show the Boneyard Exclosure reduction area included in CA-50. See Figure 7-1 in EIR Volume 1.

**Comment O6-64**

Table 8-3 – the number of acres asserted to be open for OHV riding is inconsistent within the EIR and between the EIR and the HCP and between the EIR and the Oceano Dunes SVRA soil conservation plan

Response to Comment O6-64

The acreage open for OHV riding listed in Table 8-3 is corrected. See Table 8-3 in EIR Volume 1.Comment O6-65

Table 8-3 – there is no "leasehold" with Phillips 66; that reference needs to be corrected to reflect the precise legal status of those lands

Response to Comment O6-65

See response to comment O6-7 above.

**Comment O6-66**

Footnote 48 – it is unclear what the phrase "have jurisdiction over the Coastal Act" means. It is more accurate to say that the County and the CCC "administer" the Coastal Act. Better yet, footnote 48 seems unnecessary and should be deleted.

Response to Comment O6-66

**The comment references an incorrect footnote number. Footnote 46 has been corrected as noted in the comment. Comment O6-67**

Comments & Corrections to DEIR Appendices:

• Map 2 – there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

Response to Comment O6-67

See response to comment O6-7 above.

**Comment O6-68**

Comments on Draft EA

Fig. 3 – there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

Fig. 3 – should be modified to depict the approximate location of "Old Competition Hill" to distinguish from the current Competition Hill

Fig. 6 – there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

Fig. 11 – there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

Tabel C-1 – there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

p. C-20 – there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

Table C-3 – there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

Table C-5 – there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

p. D-100 – there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

p. D-125 – there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

p. D-126 – there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

p. D-128 – there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

p. D-142 – there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

p. D-154 – there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

p. E-28 – there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

p. F-13: what is the impact on the NEPA analysis now that the CEQ regulations have been withdrawn?

Response to Comment O6-68

These comments are on the NEPA Environmental Assessment (EA) prepared by USFWS pursuant to NEPA for issuance of an ITP for covered activities requiring take authorization under FESA. USFWS released the EA for a 60-day public review on November 24, 2025. Comment on the EA is comment on a federal agency document and is beyond the scope of this EIR.

**Comment O6-69**

Friends seeks to protect Access For All while ensuring a No Net Loss management of the Oceano Dunes SVRA.

Response to Comment O6-69

Comment noted, see Master Response 3: HCP with CDPR Mission and Mandates for information on accommodating recreation and conservation.

### 3.1.11 Comment Letter O7. Motorcycle Industry Council

**Comment O7-1**

The popularity and value of recreation at Oceano Dunes State Vehicular Recreation Area (SVRA) cannot be denied. […]

The OHMVR Act of 2003 (Public Resources Code § 5090.01 et seq.) provides DPR's mandate for off-highway vehicle (OHV) recreation as highlighted above in the Mission Statement. In addition, the OHMVR Division is responsible for management, maintenance, administration, and operation of lands within SVRAs (including Oceano Dunes) (Pub. Res. Code § 5090.32, (b)Management, maintenance, administration, and operation of lands in the state vehicular recreation areas and (g) Prepare and implement management and wildlife habitat protection plans for lands in, or proposed to be included in, state vehicular recreation areas, including new state vehicular recreation areas.

Response to Comment O7-1

This comment presents no direct comment on the Draft HCP or EIR. No further analysis is needed.

**Comment O7-2**

The Associations believe the Oceano Dunes District (District) HCP provides a framework for promoting the protection and recovery of natural resources, including endangered species and provides the rationale for applying for an approval for an Incidental Take Permit (ITP) from the U.S. Fish and Wildlife Service (FWS). The HCP will protect, enhance, and restore natural resources in Pismo State Beach and Oceano Dunes SVRAs and contribute to the recovery of listed species. Rather than separately permitting and mitigating individual activities, the HCP evaluates natural-resource impacts and mitigation requirements comprehensively in a way that is more efficient and effective for at-risk species and their essential habitats.

Response to Comment O7-2

The comment expresses opinion supporting the HCP purpose. No further analysis is needed.

**Comment O7-3**

The Associations support the HCP's strategies of avoid, minimize, mitigate, and adaptive management to address OHV and other outdoor recreation impacts to listed species that also ensure long-term access to the unit for current and future generations of motorized dune enthusiasts.

Response to Comment O7-3

The comment expresses opinion supporting the HCP measures to address recreation impacts. No further analysis is needed.

**Comment O7-4**

The Associations are proud to support both the Draft HCP and issuance of the Incidental Take Permit by the FWS. We commend the Division's planning team for crafting a document that protects critical wildlife habitat and provides continued access to the SVRAs for environmentally responsible OHV recreation.

Response to Comment O7-4

The comment expresses opinion supporting the HCP and issuance of the ITP. No further analysis is needed.

### 3.1.12 Comment Letter O8. Oceano Beach Community Association

**Comment O8-1**

While the draft HCP acknowledges the presence of federally protected and threatened species—including the Tidewater Goby and Steelhead—it fails to provide meaningful protection or enforcement mechanisms.

Response to Comment O8-1

Steelhead is not a covered species in the HCP.

The HCP addresses park operation impacts to tidewater goby and provides AMMs to address take impacts. The EIR determines that the impacts to tidewater goby are less than significant. The USFWS will issue separate findings on the adequacy of the HCP in meeting ITP issuance criteria. See Master Response 1: HCP Purpose and ITP Issuance Requirements.

**Comment O8-2**

1. Disparate Restoration Standards: California State Parks has championed the restoration of Malibu Creek, yet this HCP ignores similar opportunities for Arroyo Grande Creek. Instead, the plan continues to permit thousands of vehicle crossings that result in documented pollution and significant alterations to the stream bed and bank. State Parks records indicate only 11 crossing violations in the last five years—a figure that suggests a profound failure in monitoring rather than a lack of occurrence.

Response to Comment O8-2

This is a comment on existing park management operations and not a comment on proposed new project activities. Vehicle creek crossing (CA-40) is not a new activity proposed for approval. It

is outside the scope of an EIR to analyze impacts to existing park operations, which are not subject to CEQA review. Restoration of Arroyo Grande Creek is not proposed and is outside the scope of the EIR. See Master Response 6: CEQA Baseline and Scope.

**Comment O8-3**

2. Public Safety and Enforcement Failures: The dangers of unrestricted access were underscored in December 2023, when vehicles were stranded during high-water conditions, requiring emergency rescues of adults and children.

- Video Evidence: As documented in this footage, the current "signage-only" approach is a failure.
- Lack of Intervention: Further evidence available here shows numerous vehicles crossing during hazardous conditions while State Parks rangers observe without intervening.

A conservation plan without active enforcement is merely a statement of intent, not a management tool.

Response to Comment O8-3

See response to comment O8-2.

**Comment O8-4**

3. Regulatory Compliance: Continued vehicle crossings violate the core principles of habitat preservation and likely run afoul of Fish and Game Code Section 5650. Allowing vehicles to transit through active habitats of federally protected species as recently as 2023 is inconsistent with the goals of an HCP.

Response to Comment O8-4

See response to comment O8-2.

**Comment O8-5**

1. Mischaracterization of Activity: The terms “raking” and “grooming” are misleading. In practice, this involves massive earth-moving equipment shifting tons of sand across numerous acres. This is an industrial activity, not a cosmetic cleanup.

Response to Comment O8-5

The comment is a mischaracterization of the mechanical raking equipment and activity. Raking involves towing a rake with a large tractor dragging tines into the sand at a depth of 2-6 inches to collect litter and debris. The raking activity would be limited to heavily recreated areas and would occur infrequently. It would not involve equipment using a blade to push sand nor create topographical changes across the shoreline akin to site grading. This activity is now occurring in broader plots on a trial basis. See EIR Volume 1 section 2.4.2.2.

**Comment O8-6**

2. Ecological Degradation: Scientific consensus indicates that mechanical grooming destroys the beach ecosystem by:

- Depleting Invertebrates: Grooming alters the composition and reduces the availability of invertebrates, which are a primary food source for migrating, overwintering, and nesting bird species.

- Disrupting the Food Web: By removing organic "wrack" and the life it supports, the area's utility as a migratory corridor is severely diminished.
- Habitat Loss for SNPL: Mechanical activity causes permanent changes to dune composition, reducing potential nesting habitat for the Snowy Plover (SNPL) and potentially precluding these birds from using the area entirely.
- Increased dust emissions.

Response to Comment O8-6

A literature review on the potential biological effects of mechanical trash removal was prepared for this EIR (MIG, Inc. 2025b) as discussed in EIR Volume 1 section 6.3.3. The literature review found the scale and intensity of mechanical trash removal proposed at Oceano Dunes is inconsistent with cleaning regimes reflected in the research. The protective measures and recommendations repeated throughout the literature included the use of fencing, wrack avoidance and relocation techniques, and limited spatial and temporal use of mechanical trash removal have been integrated in the AMMs specifically for CA-21 (AMM 102–111) and more broadly for each of the HCP covered species (HCP section 5.3). As proposed, the HCP AMMs and operational plan includes a range of measures that avoid and minimize the ecological impacts and concerns raised in the literature and CDFW. Based on the limited implementation of mechanical trash removal and AMMs proposed in the HCP, mechanical trash removal at Oceano Dunes should be considered a less-than-significant impact.

The information provided by the comment does not present any new substantial evidence for CDPR consideration changing the conclusions of the EIR on the impacts of mechanical trash removal.

**Comment O8-7**

To align the HCP with federal conservation mandates and ensure public safety, the OBCA urges State Parks to implement the following:

1. Prohibit Vehicle Access South of Pier Avenue whenever Arroyo Grande Creek is flowing. This is the only effective measure to prevent habitat destruction.

2. Discontinue Mechanical "Grooming". To preserve the integrity of the invertebrate population and the avian food web.

3. Prioritize Enforcement. Shift from passive observation to active enforcement of existing and new environmental protections.

Response to Comment O8-7

See responses to comment O8-2 and O8-6.

**Comment O8-8**

Beyond our immediate Oceano area we have the following concern:

1) The court recently found that State Parks is violating the Endangered Species Act by allowing vehicle use that results in "take" of Western Snowy Plovers. Therefore, the draft HCP should include a "no vehicles alternative" that would comply with this decision.

The OBCA exhorts the Off-Highway Motor Vehicle Recreation (OHMVR) Division to prioritize habitat preservation over recreational convenience. We look forward to seeing these necessary changes reflected in the final Habitat Conservation Plan.

Response to Comment O8-8

See Master Response 1: HCP Purpose and ITP Issuance Requirements, Master Response 3: HCP Proposed Activities, and Master Response 14: Discussion of Alternatives.

### 3.1.13 Comment Letter O9. Sierra Club Santa Lucia Chapter

#### Comment O9-1

The project objectives are designed to thwart the purpose of an HCP and the Endangered Species Act.

The resubmitted DEIR cites the following project objectives (2.3.2): "Preserve, manage, and expand, as appropriate, motorized and non-motorized recreational opportunities" and "Manage, maintain, and maximize, as appropriate, access to the unique coastal camping and recreational amenities in the HCP area."

Per the National Oceanic and Atmospheric Administration (NOAA), an HCP is "a planning document that outlines how a particular non-federal entity will minimize and mitigate for the incidental take of listed species while carrying out their specific activity." The Draft EIR/EA's ostensible "project objectives" cited above are simply a description of the daily operations of the ODSVRA – "their specific activity." These two particular objectives from 2.3.2 are more suitable for the project description, since they outline the "specific activity" that the HCP should be minimizing and mitigating – the sole goal of every HCP.

The Draft HCP's stated purpose is "to describe the measures the Oceano Dunes District will undertake to avoid, minimize, and mitigate specified visitor- and park operations-related impacts to several listed species" (2.3.1). However, this purpose is described as a "primary" purpose in the Draft EIR, implying that an HCP can have more than one purpose – despite its defined sole purpose per NOAA. When DPR introduces additional purposes that are not aligned with the ESA, this results in project objectives that are recast as purposes not contemplated by the ESA. DPR is proposing to "expand" and "maximize" the activities which already constitute the "visitor and park operations-related impacts" to listed species.

The inappropriate project objectives are recited throughout the Draft EA and EIR as the pretext for the rejection of many key project alternatives. The Final EA/EIR should eliminate these particular project objectives because they are antithetical to the actual purpose of a Habitat Conservation Plan and ESA Section 10. The Draft HCP and EIR/EA contend that impacts to motorized vehicular recreational activity are equivalent to environmental impacts. This fundamental distortion of state and federal environmental law infects the entirety of the Draft Habitat Conservation Plan for the Oceano Dunes District and the Draft recirculated Environmental Impact Report and Environmental Assessment, as detailed below. The final EA/EIR should remove this premise and all conclusions that are based on the faulty premise that the provisions for the expansion of motorized vehicle recreation can be prioritized at a level equal to or greater than the measures required to ensure the survival of ESA-listed species.

Response to Comment O9-1

The HCP represents CDPR's application for an ITP. HCP objectives and covered activities are the discretion of the permit applicant. See Master Response 1: HCP Purpose and ITP Issuance Requirements and Master Response 3: HCP with CDPR Mission and Mandates information on accommodating recreation and conservation.

**Comment O9-2**

The thresholds of significance are designed to thwart the purpose of an HCP and the Endangered Species Act.

The contention that impacts to recreational vehicular activity can be considered environmental impacts carries over to the DEIR 8.3.1 Thresholds of Significance. There the DEIR states, "Based on CEQA Guidelines Appendix G, the HCP would have a significant environmental impact related to recreation and public access if it would:

- Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated, or
- Include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse effect on the environment.

*In addition, CDPR has determined the project would have a significant environmental impact related to recreation and public access in the project area if it would:*

- *Substantially limit, reduce, or interfere with established coastal recreational opportunities or public access."*

The first two categories of projects, which are present in the CEQA checklist, do not apply to any of the proposed measures in the HCP. But the third bullet point is a checklist addition that has been invented entirely by DPR. The CEQA guidelines do state that the Threshold of Significance checklist "may be tailored to satisfy individual agencies' needs and project circumstances." Given an inch, DPR has taken a mile and created this entirely new threshold of significance that is not aligned with the intent of the CEQA checklist. Hence, CEQA's examples of actions involving "recreational facilities which might have an adverse effect on the environment" morph into the Draft EIR's vague "environmental impact related to recreation," and the law protecting the environment is reinterpreted as a law protecting an environmentally destructive recreational activity. This reinterpretation is echoed throughout the documents, including in the recirculated Draft EA at 8.2, purporting to assess "environmental consequences" to recreation.

Response to Comment O9-2

The environmental impact analysis is not limited to significance thresholds identified in CEQA Guidelines Appendix G. CEQA Guidelines allow for Lead Agencies to identify additional significance thresholds for consideration as may be appropriate. See Master Response 15: Recreation Impact Significance Threshold.

The proposed project is located within state park units, which are designated for public recreation. The SVRA is specifically designated for motorized vehicle recreation. Therefore, CDPR has determined that impacts to recreation access is subject to environmental review under CEQA.

**Comment O9-3**

The Draft EIR/EA's proposed reduction of exclosures will increase harms to protected species.

The Draft EIR/EA notes that the proposed reduction of the seasonal exclosures at the Boneyard and Post 6 would inevitably expose plovers to harm. It proposes the following solution to this problem: Any adult or juvenile plovers "found outside an exclosure would typically be expected

to fly out of harm's way," a statement that raises the concern that State Parks does not understand the reason for the court's ruling that it is violating the Endangered Species Act. As the 6 exclosure's northern boundary is reduced, most nesting plovers "are expected to move south into the protection of the exclosure to avoid disturbance from recreation activity." And if they don't, park personnel will scoop up wayward chicks and carry them to the safety of captivity. This is an endorsement of harassment, prohibited by the Endangered Species Act, proposed as a conservation measure. The Draft EIR is aware of this, acknowledging that "the capture itself is a form of take that could result in take above baseline conditions since it would be used in lieu of protecting nests or moving chicks back to the safety of the seasonal exclosure."

We note the contrast with US Fish and Wildlife Service notice 2025-20724 (90 FR 52993) stating that mitigation for unavoidable take would be accomplished "through meeting the biological goals and objectives outlined in the HCP. The [ODSVRA] conservation program is designed to protect and promote recovery of covered species, including managing habitat components to benefit covered species, minimizing human alteration or disturbance of native habitats, reducing conflicts between covered species and park users, restoring native habitats," etc. The proposed reduction of exclosures and the proposed mitigation for that reduction undermine those goals and objectives.

The DEIR asserts, "The Consent Decree signed by Sierra Club and CDPR… stipulates that the CDPR HCP application to the USFWS would support a northern boundary of the seasonal exclosure at Post 7. This alternative conflicts with the Consent Decree by maintaining the northern boundary of the seasonal exclosure at Post 6 and thus does not achieve the project objective of facilitating implementation of legal settlement conditions and obligations."

This is a reference to the first time DPR was legally compelled to comply with the Endangered Species Act at Oceano Dunes in 2004. Now that the DPR has expressed their "support [for] a northern boundary of the seasonal exclosure at Post 7" in the Draft HCP, that clause in the Consent Decree has been satisfied. Their support for this alternative is now on the record in their ITP application, but DPR and USFWS are under no legal obligation to continue this support should the alternative be found impermissible under ESA and CEQA. The lead agencies may now return to the other "provisions notwithstanding" of the Consent Decree and facilitate the implementation of all other legal settlement conditions and obligations. The Final EA/EIR should not eliminate protected habitat on the grounds that "reducing or eventually eliminating the 6 Exclosure ensures CDPR can better meet the recreational needs of the public under the HCP as proposed." Per our Consent Decree, DPR can propose the shrinking of the exclosure to Post 7. Contrary to DPR's belief, the Consent Decree and DPR's preference are not binding on USFWS.

Response to Comment O9-3

The HCP represents CDPR's application for an ITP. HCP objectives and covered activities are the discretion of the permit applicant. See Master Response 7: Reduction of Boneyard and 6 Exclosures (CA-50). As discussed in Master Response 7, the 6 Exclosure would not be reduced unless species target criteria are met.

The commenter is correct that capture of chicks or eggs is a form of take. The definition of "take" as defined by FESA section 9 is listed in EIR section 6.1.1. The EIR addresses the potential impact of capturing SNPL eggs or chicks for captive rearing if they are observed to be threatened by covered activities (see EIR Volume 1 section 6.3.2.1). That section has been revised to reflect that AMM 22 would be a new form of incidental take used only when it is the

best option to prevent mortality or injury to those eggs or chicks deemed vulnerable. The potential for incidental take to occur as defined by FESA section 9 is indeed the basis for CDPR seeking an ITP. The HCP addresses the potential take from AMM 22 as well as from directing SNPL chicks out of harm's way (see HCP section 4.3.2.1.2). CDPR considered historical data on nest abandonment and suspected cause of that nest abandonment when developing the take estimates for SNPL and CLTE.

**Comment O9-4**

The Draft EIR/EA alternatives analysis proposes an inadequate range of alternatives and rejects the alternative most likely to reduce the take of protected species.

The proposed ""Environmentally Superior Alternative" does not sufficiently avoid, minimize, or mitigate the take of ESA-listed species; does not provide an alternative to the reduction/elimination of endangered species habitat; and can only be considered superior due to the rejection and omission of the truly environmentally superior alternative.

The currently proposed inadequate ""Environmentally Superior Alternative" outlined in the DEIS 9.3, would include "opening the 6 Exclosure to year-round riding,

The Draft EIR/EA should reevaluate and classify as the Environmentally Superior Alternative the alternative previously rejected in the 2020 HCP process: eliminating OHV use over a transition period; allowing vehicular access/camping on the beach in the area between West Grand Avenue and Pier Avenue and closing the Pier Avenue entrance in Oceano; terminating vehicle crossings of Arroyo Grande Creek; and abandoning the plans for a southern entrance, in order to protect natural resources and sensitive species in the dunes, Arroyo Grande Creek, and Oso Flaco Lake. This would meet the DEIR's criteria of project objectives for "operating the covered park units in a manner that provides for public use and enjoyment while conserving park resources."

The DEIR rejects the Permanent Year-Round Exclosures Alternative (9.2.3) because it would "in a best-case scenario, create no net loss of recreation, but if CDPR could not identify replacement riding and camping acreage, could combine with the Dust Control Program recreation reduction to create a significant and unavoidable cumulative loss of recreation opportunity." Rather than afford this protection for endangered species and their habitat, the Draft EIR prioritizes "preserving, managing, and expanding, as appropriate, motorized and non-motorized recreational access. The Permanent Year-Round Exclosures Alternative is rejected in favor of the proposed HCP." The DEIR here borrows terms of art ("significant and unavoidable," "cumulative loss") to again conflate impacts to recreation with impacts to the environment and to create the impression that it is citing legal statutes. It is not. See above comments on Project Objectives and Thresholds of Significance.

In the DEIR section 9.2.4 Alternative 4: Reduced Vehicle Use Limits, the DEIR acknowledges that under this alternative, "The potential for SNPL and CLTE take during the breeding season could be reduced somewhat but not eliminated," but then states that this "does not substantially reduce environmental impacts of increased risk of take of SNPL and CLTE." The Final EIR should include substantiation and quantification of the terms "somewhat" and "substantially."

The Draft EIR/EA's rejection of alternatives is based on the claim that "The proposed HCP fully achieves project objectives of promoting species and habitat conservation, ensuring FESA compliance, and avoiding, minimizing, and mitigating take effects." However, this statement contrasts with DPR's request for a permit for an annual take of 16 plovers, despite having never

reported a take of more than 10 plovers in any year. After implementing the measures in the Habitat Conservation Plan, and its conflicting goal of maximizing and expanding OHV recreation, DPR is projecting an increase in the take of listed species at the Oceano Dunes. It is unclear how the HCP can "fully achieve [the] project objectives of promoting species and habitat conservation, ensuring FESA compliance, and avoiding, minimizing, and mitigating take effects" while proposing an increased take.

Table 9.2, under "Air Quality," states that under Alternative 2 "Reduction of the 6 Exclosure and Boneyard Exclosure would not occur and no increase in PM 10 emissions from year-round OHV recreation in these areas would occur." Under "Biological Resources" in the same table, Alternative 2 is characterized as "Exclosure reduction (CA-50) would occur in Boneyard Exclosure only. Existing recreational opportunities would be expanded from seasonal access (Oct–Feb) to year-round access in East Boneyard (47 acres)." The final EA/EIR needs to clarify where exclosure reduction and increased PM 10 emissions would or would not occur under this alternative.

Response to Comment O9-4

The HCP represents CDPR's application for an ITP. HCP objectives and covered activities are the discretion of the permit applicant. See Master Response 2: HCP Proposed Levels of Permitted Take, Master Response 8: Dust Control Program (CA-44), and Master Response 14: Discussion of Alternatives. Also see response to comment O9-2.

Text in EIR Volume 1 Table 9-2 Air Quality and Biological Resources rows under Alternative 2 are correct. The Recreation row under Alternative 2 is revised to correctly reference that the reduction of the Boneyard Exclosure would not occur under this alternative. This correction is consistent with the description of the alternative and the environmental analysis of Alternative 2 presented in EIR Volume 1 section 9.2.2. This correction does not change the conclusions presented in the HCP and EIR.

**Comment O9-5**

The Draft HCP and Draft EIR/EA exclude consideration of South Central Coast steelhead.

The Draft HCP and DEIS state, "Steelhead (Oncorhynchus mykiss irideus; South-Central California Coast Ecologically Significant Unit) is not proposed for coverage per letter from NOAA Fisheries (NOAA Fisheries 2008) concluding that covered activities are not likely to take steelhead with the implementation of avoidance and minimization measures (AMMs)." However, the 2008 letter from NOAA appears to only take into consideration the mouth of Arroyo Grande Creek and does not appear to address potential impacts to the lagoons adjacent to Arroyo Grande Creek, which serve as steelhead rearing habitat.

Additionally, "In an email to DPR dated December 16, 2016, NOAA Fisheries informed DPR of a desire to revisit NOAA's 2008 letter regarding take of Steelhead trout, and discuss the possibility of incorporating seasonally-specific minimization measures for vehicle crossing of the Arroyo Grande Creek during times when the creek breaches the sandbar and flows to the ocean, a time when steelhead are more likely to be using the creek while vehicles are still allowed to cross the creek" (Coastal Commission, January 2017). These updates indicate that there have been significant impacts from Arroyo Grande Creek vehicular crossings and that NOAA's 2008 letter is worthy of revisiting, especially when the creek and/or steelhead circumstances change.

The letter and Draft HCP/EIR/EA also do not take into consideration the changing conditions at Arroyo Grande Creek and intentional efforts to improve the creek's South Central Coast steelhead habitat and recovery efforts. The flow cadence of Arroyo Grande Creek has recently experienced significant change due to the Lopez Dam litigation's 2025 Preliminary Injunction, which doubled the water released from Lopez Dam in 2025 (~7-8cfs) compared to the interim downstream release schedule (IDRS) of around ~4cfs. Lopez Dam recently switched back to the IDRS and lowered the releases by around 0.5cfs/day until they got back to ~4cfs. The ultimate downstream release schedule is still being determined depending on the litigation outcome. However, the changes in flow that occurred in 2025 should be considered significant compared to the conditions in the 2008 assessment and warrant re-analysis of the condition and behavior of steelhead in Arroyo Grande Creek. Additionally, the potential for and likelihood of increased Arroyo Grande Creek flow in the near future should be considered and planned for as it is intended to improve steelhead habitat and recovery efforts in Arroyo Grande Creek.

It should also be noted that there is documented evidence of vehicles driving through Arroyo Grande Creek during high water flows at a depth when steelhead and goby could be present, despite the implementation of AMMs and State Parks staff present, as documented in the public comment portion of the January 13, 2026, Draft HCP and Recirculated Draft EIR Public Workshop. As long as vehicle crossings of Arroyo Grande Creek are permitted, violations of the permit condition will continue to occur. Based on this reality, the Draft HCP, EIR and EA should analyze the impacts of such activities on steelhead and tidewater goby.

Response to Comment O9-5

Steelhead is not a covered species in the HCP, and Vehicle Crossing of Creeks (CA-40) such as Arroyo Grande Creek or other activities identified in the HCP that may affect the lagoons adjacent to the mouth of Arroyo Grande Creek, are not new activities proposed for CDPR approval as listed in EIR Volume 1 section 2.4.2.2. Impacts to Arroyo Grande Creek, adjacent lagoons, and their resources from vehicle crossings are effects of the existing park operation and are baseline conditions. See Master Response 6: CEQA Baseline and Scope regarding vehicle crossing of Arroyo Grande Creek. It is outside the scope of this EIR to analyze effects of existing park operations as a project impact.

CDPR received a communication from NOAA Fisheries in 2016 as noted in the comment. CDPR has been in ongoing discussions with NOAA Fisheries since that communication.

CDPR management of Arroyo Grande Creek crossings is ongoing, including some changes implemented through the Biodiversity Management Plan. The potential for water releases from Lopez Dam to change flow conditions at Arroyo Grande Creek is noted. As stated above, the proposed new project activities do not change management of Arroyo Grande Creek, including motorized crossings, and would have no impact on steelhead or tidewater goby in Arroyo Grande Creek; water releases from Lopez Dam may affect park management of the creek as an existing operation but would not affect the impacts of the proposed project.

Biological effects of existing park operations are described in EIR Volume 3 Appendix D for the purpose of characterizing baseline conditions of biological resources. Appendix D discussion in the Wildlife Movement and Nursery Sites section states, "Creeks within the HCP area provide wildlife movement corridors and nursery sites for aquatic wildlife, including special-status species such as tidewater goby, steelhead, WSF, CRLF, and SWPT…No existing covered activities have been identified that would have a moderate or high risk of effect on wildlife movement and nursery sites."

Effects on tidewater goby from vehicle crossing of creeks are described in HCP section 4.8.1.5.1. EIR Volume 3 Appendix D discussion of tidewater goby in the Special-Status Animal Species section states, "The risk of mortality, injury, or disturbance effects on tidewater goby is moderate. This trend is expected to continue in the future."

See responses to comment A1-10, A1-24, and A2-10.

**Comment O9-6**

The Draft HCP and DEIR do not identify a funding source for the dune stabilization program or the HCP measures overall.

The habitat restoration program to stabilize the dunes has lost funding in recent years. A funding source must be specified to meet the requirements for a Habitat Conservation Plan. The HCP and EIR/EA should also describe how this program is focused on habitat quality and acreage restored.

DPR's promise to search for the funding necessary to carry out the programs of the HCP for a full 25 years (CDPR Public Comment Meeting HCP Oceano Dunes, 1/13/26) does not constitute a guarantee that annual funding for the 25-year period of the HCP will be available to administer, monitor, and protect the listed species, contrary to the HCP funding requirement stipulated in the ESA.

In the face of uncertain commitment of funding to fulfill the HCP for a full 25 years (CDPS Public Comment HCP Oceano Dunes 1/13/2026), permanent exclosures for Plover and Least Tern, would markedly reduce annual mitigation and monitoring costs and result in better outcomes for species.

Response to Comment O9-6

Comments regarding the adequacy of HCP funding or availability of funding sources is a comment on the HCP characteristics and not a comment on the EIR environmental analysis. It is recognized that a lack of funding would hinder the implementation of adaptive management measures, which is relied upon heavily in the HCP, and that the estimated annual budget is a substantial commitment of state funds. CDPR identifies its funding sources in the HCP to demonstrate its ability to cover the costs of fulfilling the HCP obligations, including in the event of changed circumstances. See Master Response 16: HCP Funding.

ITP issuance criteria require that applicants assure funding for implementation of the conservation program since funding is necessary for successful HCP implementation. As a result, the USFWS cannot issue the ITP if funding is not assured. In addition, since the HCP is the guiding document for the conservation plan to comply with FESA, the USFWS can revoke the ITP if funding is not assured and the HCP cannot be implemented as described. At that point, CDPR would not be authorized to take covered species, and any take would be in violation of. See HCP section 7.

HCP Handbook indicates that incidental take authorizations based on HCPs funded by annual appropriations can be made contingent on sufficient funding (USFWS 2016, page 11-19). The USFWS is responsible for determining CDPR demonstrates reliable adequate funding for the HCP effort to occur prior to issuing an ITP. See Master Response 1: HCP Purpose and ITP Issuance Requirements.

**Comment O9-7**

DPR's history of species management argues against allowing expansion of off-road vehicle use in the HCP.

In 2016, USFWS warned DPR that it was in violation of the Endangered Species Act for allowing the harassment and killing of snowy plovers at Oceano Dunes without authorization. At Oceano Dunes from 2016 to 2019, an average of four to six snowy plovers were found dead each year, most flattened in vehicle tracks. USFWS recommended measures to avoid future plover deaths, including decreasing vehicle numbers, prohibiting night riding, and making seasonal fencing protecting plover nesting habitat permanent. USFWS and DPR now dismiss these measures in the Draft HCP and EIR/EA.

In the summer of 2020, snowy plovers expanded their nesting and foraging areas while the beach was closed to vehicles in late March by the COVID-19 crisis. The Center for Biological Diversity documented State Parks staff illegally interfering with nesting of snowy plovers in former off-road riding areas at Oceano Dunes. The California Coastal Commission issued a cease and desist order prohibiting any further violations, specifically "beach grading/grooming and grading in the dunes with bulldozers and other heavy equipment; placement of stakes with mylar ribbons to deter Western snowy plover nesting activities; moving or directing nesting plovers or broods; "scuffing out" plover nesting scrapes; and placement of fences, posts, stakes etc. in areas occupied by nesting plovers." The Coastal Commission noted that the order was necessary "in order to: (1) protect Western snowy plover and California least tern nesting habitat, which constitutes environmentally sensitive habitat area (ESHA); (2) mitigate for impacts to nesting plover habitat resulting from unpermitted activities that have already taken place; (3) ensure consistency with the requirements of CDP 4-82-300, as amended, and as it has been implemented to protect plovers and terns, including their nesting habitat; and (4) pursuant to PRC Section 30809(c), avoid irreparable injury to the Subject Property, including the aforementioned ESHA, pending action by the Commission under PRC Section 30810."

Even though the COVID-19 pandemic resulted in the closure of the ODSVRA to vehicles, DPR continued to prioritize vehicular recreation over species and habitat protection and actively sought to prevent the natural expansion of plover nesting areas – harassing the birds and causing take to keep the plovers from increasing their population, a direct violation of both the letter and intent of the Endangered Species Act.

This incident, perhaps more than any other in the history of DPR's management at the ODSVRA, illustrates the fundamental incompatibility of driving off-road vehicles on the beach and enforcing the laws created to ensure the protection of wildlife and the environment.

Response to Comment O9-7

The comment presents commentary on park management and existing operations and expresses opinion on motorized vehicle use within the park. No new information is presented for CDPR consideration, and no change to the environmental analysis is required.

**Comment O9-8**

Internal conflicts in the HCP's Natural Resources Management Program should be removed.

Spreading non-native seed like sea rocket should not be part of the management plan, especially considering that the outlined modification efforts claim the need to remove it. The HCP states "Although sea rocket is non-native, the annual plant is not invasive in the HCP area and is

beneficial as to improved nesting habitat because, like other native foredune plants, it grows quickly during one nesting season. Seed and container plant collection and dispersal is conducted by hand using hand tools" (2-24). DPR should provide evidence of the non-invasive character of sea rocket. Whether or not sea rocket is classified as invasive, the impacts caused by its removal utilizing heavy equipment (DEIR, 2-13) depict a management program in conflict with itself. Per the HCP:

> "CDPR anticipates needing to remove during the non-breeding season the non-native sea rocket and larger dune hummocks in heavily vegetated areas where nesting has reduced in the Southern Exclosure. The intent of the vegetation removal would be to mimic the natural action of creek and river mouths, which can clear out acres of vegetation in one storm event to create "blow-out" areas within the foredune habitat, extremes for which foredune habitats are adapted." (2-24)

There is no creek or river mouth in the Southern Exclosure. It appears that the restoration program does not use native reference sites, historic or otherwise, to guide the program. The use of the term "restoration" for these habitat manipulation activities should be in accordance with national and international standards. See the Society for Ecological Restoration's Principles (Gann, et al). The fact that vehicle recreation forces the manipulation and maintenance of SNPL habitat in ways that appear to be at odds with the integrity of foredune development is untenable. As the impact of vehicular recreation makes this form of habitat modification necessary, it should not be rationalized as if it is part of natural dune succession.

Response to Comment O9-8

The Southern Exclosure has been adaptively managed to provide nesting and chick rearing habitat for SNPL and CLTE and to accommodate seasonal public camping and OHV activity. Over the past 20 years, this area has been managed to increase vegetative cover in some years. CDPR has introduced surface material like wood chips and large woody debris and plant material to provide for suitable nesting habitat. At other times, vegetation has grown in the Southern Exclosure and has caused topographic changes that leave the area less suitable for SNPL and CLTE nesting. Through the adaptive management program, the Southern Exclosure may be managed to maintain primary habitat characteristics that support continued nesting and chick rearing. At times that could mean introducing fast growing native and non-native/naturalized plant material and at other times that could mean habitat manipulation to remove vegetation and topographic features. Sea rocket (*Cakile maritima*) has been listed as non-native by the California Native Plant Society, but it is considered a low risk for displacing native dune vegetation and can often act as a pioneer plant for incipient foredune development.

**Comment O9-9**

We remind DPR that the California Environmental Quality Act is not the California Recreational Quality Act, and that the purpose of the Endangered Species Act is the protection and recovery of imperiled species, not to reduce their habitat for the expansion of off-road activity. Nor can that intention serve as the basis for securing a permit that is supposed to assist in the recovery of species imperiled by the activity that DPR intends to maximize and expand.

Response to Comment O9-9

The purpose of the HCP is to present a sustainable conservation program to USFWS for issuance of an ITP in compliance with FESA to authorize take of listed species that is incidental to

otherwise lawful activities. See Master Response 1: HCP Purpose and ITP Issuance for more information.

### 3.1.14 Comment Letter O10. Surfrider Foundation

#### Comment O10-1

The Surfrider Foundation (Surfrider) appreciates the opportunity to comment. However, for the reasons summarized below and detailed thereafter, Surfrider cannot support the untimely and incomplete recirculated HCP/EIR. Instead, CDPR should immediately work with the California Coastal Commission to design and fund independent carrying capacity studies for each park (Pismo State Beach and the ODSVRA), an updated vehicular entrance study, and also work with the SLO County Board of Supervisors and the State Legislature to plan for a Vehicle Free Beach for Oceano by December 2030.

Response to Comment O10-1

The comment expresses opinion on the HCP and EIR. Specific comments are addressed in response to comments O10-2 through O10-7 below.

#### Comment O10-2

I. Status of the Grand Avenue and Pier Avenue Entrances Remains Unresolved Under the Coastal Act

Public vehicular access to Pismo State Beach south of Grand Avenue remains authorized only on a temporary basis under the applicable Coastal Development Permit (CDP). As stated in the California Coastal Commission's March 18, 2021 staff report regarding the Oceano Dunes CDP review, the Commission has never analyzed or authorized permanent vehicular use of the Grand Avenue or Pier Avenue entrances, as required by the base CDP. Consequently, their continued use remains temporary under the Coastal Act.

CDPR's correspondence responding to that staff report acknowledges this unresolved status and contemplates future closure of one or both northern entrances upon establishment of a permanent southern access route, subject to a Public Works Plan (PWP) and additional permitting. The HCP/EIR itself recognizes that Coastal Act compliance remains within the Coastal Commission's authority and that state agencies must act consistently with the Act.

Despite this acknowledged uncertainty, the recirculated HCP/EIR assumes continued vehicular access through Grand and Pier Avenues as a fixed condition rather than treating it as a legally contingent issue. This assumption constrains the range of alternatives and management scenarios evaluated in the document and prejudges issues that are properly within the Coastal Commission's jurisdiction. We propose that CDPR, California Coastal Commission, the San Luis Obispo County Board of Supervisors, and the State Legislature come together and create a plan for a Vehicle Free Beach for Oceano by December 2030. After all, 43 years ago Pier and Grand Avenues were designated as temporary access routes for vehicles to the beach and State Vehicle Recreation Area (SVRA). Oceano requires a Vehicle Free Beach (VFB) to correct the environmental and economic injustice it has suffered for more than four decades. We propose a 2.2 mile VFB starting 3/10th of a mile North of Pier Avenue and ending 1.9 miles South of Pier Avenue at Pole 4 (boundary of the Oceano Dunes Preserve).

Response to Comment O10-2

This is a comment on existing park operations and unresolved CDP issues. See Master Response 4: Consistency with Coastal Act and Master Response 5: Public Works Plan. The comment does not present any new substantial evidence for CDPR consideration of how the EIR analysis of impacts or selection of alternatives is inadequate.

**Comment O10-3**

II. Management of Pismo State Beach South of Grand Avenue Raises Unresolved Statutory and Coastal Act Compliance Questions

The recirculated HCP/EIR characterizes the area of Pismo State Beach south of Grand Avenue as a State Beach within the San Luis Obispo State Seashore. While PRC § 5001.6(b)(7) establishes the seashore framework, it does not relieve CDPR of the obligation to manage individual units consistently with their statutory purposes and the Coastal Act.

PRC § 5019.56(c) defines State Beaches as areas designed to provide swimming, boating, fishing, and other beach-oriented recreational activities. Public vehicular driving, parking, and tailgating are not explicitly included among those activities. The question is not whether vehicular access could ever occur in a State Beach context, but whether such use—particularly when conducted at scale within an environmentally sensitive habitat area—has been adequately demonstrated to be consistent with the unit's statutory purpose and Coastal Act protections.

Nearly the entire project area is designated as environmentally sensitive habitat area (ESHA) under the Coastal Act and applicable Local Coastal Programs. Coastal Act § 30240 permits only resource-dependent uses within ESHA and requires that adjacent development be sited and designed to avoid significant habitat degradation. As noted by Coastal Commission staff, off-highway vehicular recreation is not resource-dependent, as it can and does occur outside sensitive habitat areas.

The HCP/EIR does not resolve this threshold issue. Instead, it relies on mitigation measures intended to reduce impacts from a use that has not been demonstrated to be permissible in the first place. Whether vehicular recreation can lawfully occur in this ESHA, and under what conditions, is a foundational question that must be addressed through Coastal Act compliance processes, not assumed for purposes of the HCP/EIR.

Further, the Recirculated Draft EIR's analysis of recreation and public access treats vehicular recreation as co-equal with all other forms of coastal use, without adequately analyzing whether vehicle-dominated management degrades or displaces non-vehicular beach access and traditional coastal recreation. At Pismo State Beach south of Grand Avenue, public access increasingly functions around vehicle circulation, parking, and traffic management rather than walking, shoreline recreation, wildlife observation, and other beach-oriented uses that are central to public enjoyment of the coast. CEQA requires disclosure of not only quantitative access counts, but also qualitative degradation of recreational experience and functional access. The EIR does not meaningfully analyze how the scale, footprint, and operational dominance of vehicular recreation affect the ability of non-vehicular users to safely and reasonably access and enjoy the beach. This omission understates impacts to coastal access and conflicts with Coastal Act policies intended to protect and maximize public access and recreational opportunities along the shoreline.

Response to Comment O10-3

See Master Response 4: Consistency with Coastal Act and Master Response 5: Public Works Plan. The comment does not present any substantial evidence for CDPR consideration or change the analysis contained in the EIR.

CEQA Guidelines allow for a Lead Agency to establish significance thresholds beyond those listed in CEQA Guidelines Appendix G. See Master Response 15: Recreation Impact Significance Threshold. The significance threshold identified in EIR Volume 1 section 8.3 also includes impact to recreational access, which is not coastal dependent, in addition to impact to coastal recreation opportunity. Chapter 9 discusses the effects of alternatives on recreational access, which is not limited to coastal dependent recreation opportunities.

Motorized vehicle use occurs within the HCP area consistent with the Local Coastal Program as an existing park activity. The General Plan for the HCP area includes vehicle access to both Pismo State Beach and Oceano Dunes SVRA. CDPR has a legislative mandate to operate SVRAs in a manner that provides sustainable motorized recreation (PRC § 5090.01 *et seq*.). See Master Response 3: HCP with CDPR Mission and Mandates. Motorized vehicle use within the park is a baseline condition and is not subject to new environmental review under CEQA. See Master Response 6: CEQA Baseline and Scope.

**Comment O10-4**

III. Project Objectives Should Not Be Applied Uniformly to Pismo State Beach and ODSVRA

The HCP/EIR applies a single set of project objectives to both ODSVRA and Pismo State Beach, despite their distinct classifications, statutory purposes, and management contexts. Many objectives—such as preserving and expanding motorized recreational opportunities or obtaining incidental take authorization—are driven by high-impact vehicular recreation that is characteristic of an SVRA, not a State Beach.

Lower-impact coastal recreation is routinely managed at other State Beaches through adjustment of permitted activities to protect sensitive species, without the need for an HCP or ITP. The HCP/EIR does not adequately analyze whether similar management approaches at Pismo State Beach would meet conservation goals while avoiding the need for many of the proposed objectives and mitigations.

Response to Comment O10-4

Motorized vehicle use within the park is a baseline condition and is not subject to new environmental review under CEQA. See Master Response 6: CEQA Baseline and Scope. Also see response to comment O10-3 above.

Pismo State Beach and Oceano Dunes SVRA park units provide both motorized and non-motorized recreation opportunities consistent with the 1975 General Plan. See Master Response 3: HCP with CDPR Mission and Mandates for more information.

**Comment O10-5**

IV. Failure to Independently Analyze Carrying Capacity Constitutes a CEQA Deficiency

While the HCP and EIR provide extensive species-specific analysis for listed terrestrial and aquatic species, they do not adequately address ecosystem-level impacts to the beach and dune system that are fundamental to coastal health. Beach ecosystems function as integrated systems, in which natural wrack accumulation, invertebrate communities, and dune–beach connectivity

support shorebirds, nearshore food webs, and overall coastal resilience. The documents do not meaningfully evaluate how ongoing vehicle traffic, sand compaction, grooming practices, and repeated disturbance may affect these coastal ecosystem processes at the beach–ocean interface. By focusing narrowly on individual species take, the analysis risks understating broader degradation of coastal ecosystem function. Surfrider SLO urges CDPR to address this gap to ensure compliance with CEQA and Coastal Act requirements to protect environmentally sensitive habitat areas and the biological integrity of coastal resources.

The HCP/EIR does not include an independent carrying capacity analysis for Pismo State Beach separate from ODSVRA. This omission is significant. Joint analysis masks site-specific environmental impacts, visitor experience effects, and feasible management alternatives.

Under CEQA, agencies must meaningfully analyze environmental impacts and reasonable alternatives. By assuming continued vehicular use at Pismo State Beach and coupling its analysis to ODSVRA, the HCP/EIR forecloses consideration of lower-impact recreational models and fails to disclose the full range of environmental consequences.

An independent carrying capacity analysis is necessary to determine allowable uses consistent with ESHA protection and the statutory purpose of Pismo State Beach.

Response to Comment O10-5

Park visitor use levels including motorized vehicle use limits is an existing baseline condition. No changes are proposed to visitor use levels by proposed new project activities evaluated in the EIR. As such, a carrying capacity analysis to assess existing park operations is outside the scope of the EIR. See Master Response 6: CEQA Baseline and Scope.

Also see Master Response 4: Consistency with Coastal Act and Master Response 14: Discussion of Alternatives.

**Comment O10-6**

V. Recirculation of the HCP/EIR Is Premature Pending Resolution of the PWP and Coastal Act Issues

As early as December 2020, Surfrider SLO and allied organizations urged CDPR and the U.S. Fish and Wildlife Service to defer completion of the HCP/EIR until after Coastal Commission action on the PWP. That recommendation remains sound.

The scope, alternatives, and mitigation measures evaluated in the HCP/EIR are fundamentally shaped by assumptions about access, use, and management that remain undecided under the Coastal Act. Proceeding with recirculation at this stage risks prejudicing Coastal Commission authority and locking in management approaches before threshold legal determinations are made.

Response to Comment O10-6

See Master Response 1: HCP Purpose and ITP Issuance Requirements, Master Response 3: HCP with CDPR Mission and Mandates; Master Response 4: Consistency with Coastal Act, Master Response 5: Public Works Plan, Master Response 6: CEQA Baseline and Scope, and Master Response 14: Discussion of Alternatives.

**Comment O10-7**

VI. Conclusion For the reasons above, Surfrider cannot support many of the changes proposed in the recirculated HCP/EIR. CDPR should begin managing Pismo State Beach consistent with its

statutory purpose, independently assess carrying capacity, protect ESHA, and engage with the California Coastal Commission to determine allowable public uses before advancing an HCP or seeking incidental take authorization. Further, Surfrider requests CDPR, the California Coastal Commission, the SLO County Board of Supervisors, and the State Legislature come together and create a plan for a Vehicle Free Beach for Oceano by December 2030.

Response to Comment O10-7

The comment expresses opinion on the HCP and park operations. No additional information is presented for CDPR consideration.

See Master Response 3: HCP with CDPR Mission and Mandates, Master Response 4: Consistency with Coastal Act, and Master Response 6: CEQA Baseline and Scope.

## RESPONSES TO INDIVIDUAL COMMENTS

Comment letters from individuals and responses to those comment letters are included in this section.

### 3.1.15 Comment Letter I1. John Anderson

#### Comment I1-1

The dunes should remain open to OHV users.

Response to Comment I1-1

The HCP does not propose any new projects that would adversely impact access to coastal recreation. New covered activities would benefit recreation access by developing new or improving existing facilities (i.e., reduction in seasonal exclosures [CA-50], limited trail riding [CA-42]), see HCP sections 2.2.5.3 and 2.2.5.11 and EIR Chapter 2 for more information. CA-50 and CA-42 (if implemented) are expected to result in a net gain in OHV recreation access compared to existing conditions.

### 3.1.16 Comment Letter I2. Judith Anderson

#### Comment I2-1

As a resident of the Central Coast in Edna, CA, I find the DEIR and HCP inadequate and they insufficiently address the environmental impacts of the Oceano Dunes State Vehicular Recreation Area. The DEIR and HCP fail to protect threatened species and mitigate impacts to public and environmental health. They clearly prioritize vehicle recreation instead of habitat conservation, not meeting the requirements of an HCP.

Response to Comment I2-1

The comment does not present any substantial evidence for CDPR consideration or identify specific deficiencies in the EIR analysis. The HCP presents a comprehensive conservation program and the EIR analysis has determined the impacts on special-status species and public health would be less than significant.

See Master Response 1: HCP Purpose and ITP Issuance Requirements and Master Response 3: HCP with CDPR Mission and Mandates.

**Comment I2-2**

Please change the Draft EIR and HCP to include: Comprehensive analysis and consideration of the no-vehicle alternative; Decrease the allotted take of the Western Snowy Plover and ESA-listed species; Increasing the duration and number of protection measures, and return to year-round exclosures protecting the plover and California least tern. Include analysis of the environmental impacts of foreseeable potential future projects, including a southern entrance to the ODSVRA and development around Oso Flaco Lake.

Response to Comment I2-2

See Master Response 14: Discussion of Alternatives for information on a no-vehicle alternative.

See Master Response 1: HCP Purpose and ITP Issuance Requirements and Master Response 2: HCP Proposed Levels of Permitted Take for information on permitted take levels of SNPL.

The HCP includes 147 SNPL AMMs and 130 CLTE AMMs. With these measures in place, the EIR has determined the impact to SNPL and CLTE is less than significant. See Master Response 14: Discussion of Alternatives for information on a year-round exlosure alternative.

A southern entrance to the SVRA was identified in the draft PWP. CDPR is not actively pursuing this project, and it is not considered a reasonably foreseeable future project in the EIR. CDPR evaluated changes to SVRA access and rejected them from further consideration in EIR Volume 1 section 9.1.3. See Master Response 14: Discussion of Alternatives for information on considered and rejected alternatives including changes to SVRA access routes.

**Comment I2-3**

This matters to me because I am a coastal resident and have seen the devastation caused by vehicles on the dunes and beach.

Response to Comment I2-3

The comment expresses opinion on vehicle recreation at Oceano Dunes. No specific comment is presented on the content of the HCP or analysis in the EIR.

Motorized recreation (CA-1) is an authorized ongoing activity in the HCP and is not analyzed in the EIR as a proposed new visitor use or project activity. Impacts of existing activities are discussed HCP Chapter 4 and EIR Appendix D. See Master Response 6: CEQA Baseline and Scope for more information.

### 3.1.17 Comment Letter I3. Ann Anvril

**Comment I3-1**

The quality of the air is diminished, and has been determined to be unhealthy by experts who monitor this, due to the vehicle activity on the dunes. The vehicles make it unsafe to be at the dunes. The vehicles chew up the dunes which exist to protect the coast as a barrier. Without the dunes the shoreline deteriorates. When I come, I eat out, stay over in hotels, and contribute to the local economy. I've become actively invested and interested in this issue because it affects me and my life.

Response to Comment I3-1

Air quality impacts of the proposed project activities are addressed in EIR Volume 1 section 5.3 and are determined to be less than significant with mitigation incorporated. CDPR engages in

dust control activities under a separate state agency program. See Master Response 8: Dust Control Program (CA-44).

Motorized recreation (CA-1) is an authorized ongoing activity in the HCP and is not analyzed in the EIR as a proposed new visitor use or project activity. Impacts of existing activities are discussed HCP Chapter 4 and EIR Appendix D. See Master Response 6: CEQA Baseline and Scope for more information.

**Comment I3-2**

In reading the DEIR and HCP the focus and priorities are clearly on the vehicles and their recreation over the public's health and habitat conservation, which affects me, my family, and friends and the birds and other wildlife that are trying to survive.

Response to Comment I3-2

CDPR has a mandate to balance the need to protect California's natural resources, while providing recreational access to the parks. See Master Response 3: HCP with CDPR Mission and Mandates for more information.

**Comment I3-3**

The DEIR and HCP don't address the environmental impacts of the Oceano Dunes State Vehicular Recreation Area and don't protect the Western snowy plover and California least tern in a sufficient way. The Western snowy plover is protected by the Endangered Species Act and requires habitat conservation which the HCP, as it is, does not meet the requirements.

Response to Comment I3-3

The purpose of the HCP is to present a sustainable conservation program to USFWS for issuance of an ITP in compliance with FESA to authorize take of listed species that is incidental to otherwise lawful activities. An HCP is not a species recovery plan, as defined in Section 4 of FESA, and is not required under FESA to eliminate all activities that could result in take or to include activities that directly contribute to delisting covered species populations. See Master Response 1: HCP Purpose and ITP Issuance Requirements for more information.

**Comment I3-4**

Please change the Draft EIR and HCP to include comprehensive analysis and consideration of the no-vehicle alternative and decrease the allotted take of the Western Snowy Plover. Please increase the duration and number of protection measures, and go back to year-round exclosures protecting the Western snowy plover and California least tern.

Response to Comment I3-4

The HCP includes 147 SNPL AMMs and 130 CLTE AMMs. With these measures in place, the EIR has determined the impact to SNPL and CLTE is less than significant. See Master Response 14: Discussion of Alternatives for information on no vehicle alternative and a year-round exlosure alternative.

**Comment I3-5**

Please include analysis of the environmental impacts of foreseeable potential future projects, including a southern entrance to the ODSVRA and development around Oso Flaco Lake.

Response to Comment I3-5

A southern entrance to the SVRA was identified in the draft PWP. This project is not being actively pursued by CDPR and is not considered a reasonably foreseeable future project for consideration in the EIR, see Master Response 5: Public Works Plan for more information. CDPR evaluated changes to SVRA access and rejected them from further consideration in EIR Volume 1 section 9.1.3. See Master Response 14: Discussion of Alternatives for information on considered and rejected alternatives including changes to SVRA access routes.

### 3.1.18 Comment Letter I4. Jennifer Bauer

#### Comment I4-1

As a resident of San Luis Obispo. I find the DEIR and HCP inadequate and they insufficiently address the environmental impacts of the Oceano Dunes State Vehicular Recreation Area. The DEIR and HCP fail to protect threatened species and mitigate impacts to public and environmental health. They clearly prioritize vehicle recreation instead of habitat conservation, not meeting the requirements of an HCP.

Response to Comment I4-1

See response to comment I2-1 above.

#### Comment I4-2

Please change the Draft EIR and HCP to include: Comprehensive analysis and consideration of the no-vehicle alternative; Decrease the allotted take of the Western Snowy Plover and ESA-listed species; Increasing the duration and number of protection measures, and return to year-round exclosures protecting the plover and California least tern.. Include analysis of the environmental impacts of foreseeable potential future projects, including a southern entrance to the ODSVRA and development around Oso Flaco Lake

Response to Comment I4-2

See response to comment I2-2 above.

#### Comment I4-3

The continued use of Off-Highway Vehicles (OHVs) on the dunes poses significant risks that can no longer be overlooked:

- **Protection of Endangered Species**: The dunes are critical nesting grounds for the Western Snowy Plover and the California Least Tern. Continued vehicle activity disrupts these fragile ecosystems and threatens the recovery of these species.
- **Air Quality and Public Health:** Dust emissions from the riding areas consistently violate state air quality standards, impacting the health of downwind communities.
- **Cultural Preservation:** We must respect the ancestral lands of the Northern Chumash and ensure these sacred coastal sites are preserved rather than degraded by recreational traffic.
- **Coastal Resilience:** As sea levels rise, intact dune systems serve as a vital natural barrier. Protecting the dunes from tire-driven erosion is essential for climate adaptation.

Response to Comment I4-3

The EIR evaluates impacts on SNPL and CLTE. Existing impacts on these species from vehicle activity is part of baseline conditions. See Master Response 1: HCP Purpose and ITP Issuance

Requirements, Master Response 3: HCP with CDPR Mission and Mandates, and Master Response 6: CEQA Baseline and Scope.

Air quality impacts of the proposed project activities are addressed in EIR Volume 1 section 5.3 and are determined to be less than significant with mitigation incorporated. CDPR engages in dust control activities under a separate state agency program. See Master Response 8: Dust Control Program (CA-44).

Cultural and tribal cultural resource impacts are addressed in EIR Volume 1 section 7.3 and are determined to be less than significant. See responses to comment letter T1 from the Northern Chumash Tribal Council.

See Master Response 11: Climate Change and Sea Level Rise.

**Comment I4-4**

As native Californian, I have lived along the coast my entire life. I regularly swim, paddleboard, and boogie board in our county's coastal waters. I regularly walk on Pismo Beach, but can't walk past where cars are driving on the beach due to safety and health considerations. While I recognize the history of recreation at this site, the priority must shift toward passive recreation (hiking, birding, and nature study) that allows the ecosystem to heal and ensures the coast remains accessible for all Californians, not just a specific subset of motorized users.

Response to Comment I4-4

Pismo State Beach and Oceano Dunes SVRA park units provide both motorized and non-motorized recreation opportunities. Large areas of the HCP area are designated for pedestrian use only with motorized use prohibited (e.g., Pismo State Beach north of Grand Avenue, Pismo Dunes Natural Preserve, and Oso Flaco Lake area). See Master Response 3: HCP with CDPR Mission and Mandates for more information.

Motorized recreation (CA-1) is an authorized ongoing activity in the HCP and is not analyzed in the EIR as a proposed new visitor use or project activity. Impacts of existing activities are discussed HCP Chapter 4 and EIR Appendix D. See Master Response 6: CEQA Baseline and Scope for more information.

**Comment I4-5**

Please take decisive action to phase out vehicle use and transition Oceano Dunes into a protected state park focused on conservation and sustainable public access.

Response to Comment I4-5

Oceano Dunes SVRA is a park unit designated for OHV recreation. See Master Response 3: HCP with CDPR Mission and Mandates for more information. Also see Master Response 14: Discussion of Alternatives regarding consideration of a No Vehicle Alternative.

### 3.1.19 Comment Letter I5. Michelle Betty

**Comment I5-1**

Thank you for this eye-opening story. I used to paint the ocean at the Guadalupe dunes where they also have plovers. It is a beautiful area. It's amazing that officials in the park were trying to destroy/deter the nesting grounds of clovers for off-road enjoyment unbelievable! And sad.

Response to Comment I5-1

The comment expresses opinion on vehicle recreation at Oceano Dunes. No specific comment is presented on the content of the HCP or analysis in the EIR.

See Master Response 3: HCP with CDPR Mission and Mandates and Master Response 6: CEQA Baseline and Scope.

### 3.1.20 Comment Letter I6. Heather Brophy

#### Comment I6-1

Please, the time has come to take back OUR BEACH and let the HEALING BEGIN, we have the knowledge now that we are killing our Planet and can STOP IT! REMEMBER WE PAY YOU TO PROTECT, PLEASE DO YOUR JOB FOR OUR PLANET!!

Response to Comment I6-1

The comment expresses general opinion. No specific comment is presented on the content of the HCP or analysis in the EIR. No further response is required.

See Master Response 3: HCP with CDPR Mission and Mandates.

### 3.1.21 Comment Letter I7. Richard Brotherton

#### Comment I7-1

After watching this legal battle play out while enjoying the Dunes recreation area over the years, the only practical solution is twofold;

1. The Dunes State Park along with pro-wildlife experts and enthusiasts should create the largest and most protected area possible for the endangered birds.

2. Over the years I have become a firm believer that most visitors use the park to simply drive on the beach and not run vehicles on the dunes which of course damages them. Therefore, restricting even further or eliminating vehicles on the dunes would demonstrate a good faith effort toward protecting the environment.

Losing the battle for vehicle access of any kind would be devastating. Compromise is the only sensible way forward.

Response to Comment I7-1

The comment expresses opinion on vehicle recreation at Oceano Dunes. No specific comment is presented on the content of the HCP or analysis in the EIR. No further response is required.

See Master Response 3: HCP with CDPR Mission and Mandates.

### 3.1.22 Comment Letter I8. Wendy Brown

#### Comment I8-1

As a resident of the Central Coast in San Luis Obispo, I find the DEIR and HCP inadequate and that they insufficiently address the environmental impacts of the Oceano Dunes State Vehicular Recreation Area. The DEIR and HCP fail to protect threatened species and mitigate impacts to public and environmental health. They clearly prioritize vehicle recreation instead of habitat conservation, not meeting the requirements of an HCP.

Response to Comment I8-1

See response to comment I2-1 above.

**Comment I8-2**

Please change the Draft EIR and HCP to include: Comprehensive analysis and consideration of the no-vehicle alternative; Decrease the allotted take of the Western Snowy Plover and ESA-listed species; Increasing the duration and number of protection measures, and return to year-round exclosures protecting the plover and California least tern. Include analysis of the environmental impacts of foreseeable potential future projects, including a southern entrance to the ODSVRA and development around Oso Flaco Lake.

Response to Comment I8-2

See response to comment I2-2 above.

**Comment I8-3**

This matters to me because these coastal resources are fragile. Once they are destroyed it will be impossible to bring them back to their original condition. The current proposed rules will allow people to drive unsafely on the dunes, destroy habitat and wildlife, and teach their children that the natural world is theirs to ruin.

Response to Comment I8-3

See response to comment I2-3 above.

### 3.1.23 Comment Letter I9. Debra and Keneth Campbell

**Comment I9-1**

We support the CORVA views the Incidental Take Permit and Habitat Conservation Plan process as a critical opportunity to provide regulatory certainty, align management actions with measurable biological goals, and ensure continued public access while listed species are protected and recovered. Please keep Oceano Dunes open for OHV.

Response to Comment I9-1

Comment noted. See response to California Off-Road Vehicle Association letter O3-1 above.

### 3.1.24 Comment Letter I10. Andrea Chavez

**Comment I10-1**

In the late 1970s, I was involved in gathering evidence that off-roading in the Oceano Dunes destroys vegetation and habitat, and contributes to poor air quality on the Mesa. This proof is still visible today when the wind is strong. Slides taken by Randy McCoy throughout the 70s were given to the California Native Plant Society, showing how off-roading destroys vegetation and consequently, the dunes themselves. California State Parks should NOT allow off-roading in the Oceano Dunes. These dunes are so crucial to our environment here on the Central Coast.

Response to Comment I10-1

The comment does not present any substantial evidence for CDPR to consider or identify specific deficiencies in the EIR analysis. The HCP presents a comprehensive conservation program and the EIR analysis has determined the impacts on biological resources and public health would be less than significant.

Oceano Dunes SVRA is a park unit designated for OHV recreation. See Master Response 3: HCP with CDPR Mission and Mandates for more information.

Motorized recreation (CA-1) is an authorized ongoing activity in the HCP and is not analyzed in the EIR as a proposed new visitor use or project activity. Impacts of existing activities are discussed HCP Chapter 4 and EIR Appendix D. See Master Response 6: CEQA Baseline and Scope for more information.

### 3.1.25 Comment Letter I11. Bonnie Cimo

#### Comment I11-1

Protect the dunes and all that lives in them, including the snowy plover. I have been to Oceano Dunes within the past year and found it tragic to see and hear loud, motorized vehicles tearing up the beach. These lands are rare and precious. Humans can survive without this behavior; the snowy plovers cannot. I agree with the judge: protect the environment.

Response to Comment I11-1

The comment does not present any substantial evidence for CDPR to consider or identify specific deficiencies in the EIR analysis. The HCP presents a comprehensive conservation program and the EIR analysis has determined the impacts on special-status species would be less than significant.

Oceano Dunes SVRA is a park unit designated for OHV recreation. See Master Response 3: HCP with CDPR Mission and Mandates for more information.

Motorized recreation (CA-1) is an authorized ongoing activity in the HCP and is not analyzed in the EIR as a proposed new visitor use or project activity. Impacts of existing activities are discussed HCP Chapter 4 and EIR Appendix D. See Master Response 6: CEQA Baseline and Scope for more information.

### 3.1.26 Comment Letter I12. Martha Cody

#### Comment I12-1

I read in the San Luis Tribune today that your department is supporting an incidental take permit to allow continued off road vehicles in the Oceano Dunes, despite the impact on the environment, specifically the snowy plovers.

I understand that this site is a major money maker for both the state and local businesses. However, preserving the unique environment of the Oceano Dunes, and the continued increase in snowy plovers numbers, should take precedence over profits. Every bird matters, and even the phrase “incidental taking” reflects misaligned priorities and a lack of humanity. Please reconsider this decision and stop supporting industry at the expense of nature.

Response to Comment I12-1

The purpose of the HCP is to present a sustainable conservation program to USFWS for issuance of an ITP in compliance with FESA to authorize take of listed species that is incidental to otherwise lawful activities. See Master Response 1: HCP Purpose and ITP Issuance Requirements for more information.

CDPR has a mandate to balance the need to protect California’s natural resources, while providing recreational access to the parks. See Master Response 3: HCP with CDPR Mission and Mandates for more information.

Motorized recreation (CA-1) is an authorized ongoing activity in the HCP and is not analyzed in the EIR as a proposed new visitor use or project activity. Impacts of existing activities are discussed HCP Chapter 4 and EIR Appendix D. See Master Response 6: CEQA Baseline and Scope for more information.

### 3.1.27 Comment Letter I13. Philip Davenport

#### Comment I13-1

I'm deeply concerned about the proposed HCP for Oceano Dunes. This proposal seriously compromises the needs of the wider natural environment in favour of (human) recreational activities, using off-highway vehicles. Which seems to me a sad dereliction of care on behalf of State Parks and the other custodians of our environment in this instance. Please re-draft the draft!

Response to Comment I13-1

See response to comment I12-1 above.

### 3.1.28 Comment Letter I14. Jeffrey Edwards

#### Comment I14-1

Chapter 7. FUNDING

The HCP covers ten (10) federally listed plants and animals. This number is infinitesimal as compared to the total number of species that utilize the ODSVRA. Spending $97 - $110 million over the next 25-years to manage, protect and conserve the 10 individual plants and animals covered would likely fail a cost/benefit analysis. Creating more continuous open space that eliminates vehicle access along the beach and around the Pismo Dines Natural Preserve (PDNP) including the Arroyo Grande Creek mouth would better serve the purpose. In doing so, not only would many of the covered species in the HCP be conserved, but a myriad of other species would also benefit. The management of species individually appears to be less efficacious than a multi-species habitat conservation approach, especially in this instance. The draft HCP does not demonstrate a favorable cost/benefit ratio to warrant proceeding with the current funding regime.

Response to Comment I14-1

The HCP is specifically required for issuance of an ITP to comply with FESA and therefore focuses on federally listed species. See Master Response 1: HCP Purpose and ITP Issuance Criteria for more information. The HCP has a comprehensive conservation program that is focused on covered species management but benefits other species in the HCP area as well (see HCP Chapter 5).

Also note that CDPR is working with CDFW to develop an NCCP to address take of state-listed species, see Master Response 10: California Fully Protected Species and NCCP for more information.

Other species and habitats in the HCP area are addressed by the Wildlife Habitat Protection Plan (WHPP), covered activity CA-18 in the HCP (HCP section 2.2.2.4). The Oceano Dunes SVRA WHPP has been developed to standardize a broad range of scientifically accepted techniques and practices appropriate for monitoring the health of the unique habitats found within the HCP area.

See Master Response 16: HCP Funding for information on HCP funding.

**Comment I14-2**

"Chapter 8. ALTERNATIVES

Project Alternatives Considered and Rejected

Changes in SVRA access - Changing the primary entrance to the ODSVRA at the closed oil refinery (Phillips) would allow Pier Ave. in Oceano to be closed to beach access by vehicles. This commenter supports using the existing and proposed Offer-to-Dedicate (OTD) alignment at Phillips for access to the ODSVRA. The closure of the Pier Ave. sand ramp to vehicle access to the beach (except for emergencies) would eliminate the Arroyo Grande Creek crossing, and subsequently the need for it to be a covered activity. It appears all of the animals covered in the HCP are adapted to freshwater habitats making Arroyo Grande Creek, its estuary, and the contiguous PDNP vitally important to conservation of all species that utilize the ODSVRA. The protection of Arroyo Grande Creek should be the centerpiece of a HCP mitigation program. A new entrance to the ODSVRA at Phillips should be further considered as an alternative in this draft HCP."

Response to Comment I14-2

CDPR may consider other access points into the park in the future but those changes are not considered in the HCP or EIR. The current access points into the park at Grand and Pier Avenues are part of the baseline condition. If a southern access point into ODSVRA were to be considered in the future, the HCP could be amended if that effort resulted in changed conditions for the covered species. The commenter favors an approach to park access that does not reflect the ongoing baseline conditions in the park. This alternative does not meet the standard for review as an alternative because it is infeasible. Changes in Oceano Dunes SVRA Access is discussed in EIR Volume 1 section 9.1.3.2 in considered and rejected alternatives i. See Master Response 14: Discussion of Alternatives for more information. Also see Master Response 5: Public Works Plan.

**Comment I14-3**

Restricted riding times - All nighttime dune riding should be prohibited, if not already. In reviewing the January 1, 2024 DPR Order No. 554-005-2024, Vehicle Operations directive in Appendix B, it does not appear nighttime riding is prohibited. Moreover, given “restricted riding times” as a project alternative is being dismissed in the HCP, the commenter must conclude nighttime riding will continue, however should be reversed.

Response to Comment I14-3

A Night Closure Alternative was a considered but rejected alternative in the EIR. See Master Response 14: Discussion of Alternatives for information. Also see response to CDFW comment A2-2 above.

**Comment I14-4**

Please reject the draft HCP and Proposed Environmentally Superior Alternative as presented. Consequential mitigation should be cost effective and include multiple species and in this case, could be achieved with the prohibition of vehicles along all beachfront from the current Pier Ave. entrance to approximately mile marker 3.75 fronting the PDNP.

Response to Comment I14-4

See EIR Volume 1 Chapter 9 and Master Response 14: Discussion of Alternatives for information on alternatives considered in the EIR and why the proposed HCP was the selected alternative.

**Comment I14-5**

Furthermore, it is unclear how the HCP relates or "dovetails" with other conservation and habitat protection plans in effect at the ODSVRA. Examples include; but are not limited to, the Biodiversity Management Plan and the Wildlife Habitat Protection Plan. Likewise, current dust mitigation strategies pursuant to the Stipulated Order of Abatement often conflict with habitat management efforts by creating landscapes unsuitable for covered species, the Western Snowy Plover being such an instance. A discussion of how the HCP would work in concert with other conservation and mitigation efforts in the ODSVRA would appear to be constructive and informative.

Response to Comment I14-5

The purpose of the HCP is to present a sustainable conservation program to USFWS for issuance of an ITP in compliance with FESA to authorize take of listed species that is incidental to otherwise lawful activities. See Master Response 1: HCP Purpose and ITP Issuance Requirements for more information. Other conservation plans and habitat protection plans in effect in the HCP area have different purposes and respond to different regulatory requirements, but do not conflict with the HCP. See Master Response 10: California Fully Protected Species and NCCP regarding the Biodiversity Management Plan. See HCP section 2.2.2.4 regarding the WHPP and HCP section 2.2.5.5 regarding dust control activities, which are covered activities in the HCP (CA-18 and CA-44). See HCP section 4.3.1.5.5 regarding the impacts of dust control activities on SNPL, and respective sections of Chapter 4 on the impact of dust control activities on other HCP covered species. CDPR will implement all AMMs (HCP section 5.3), as appropriate, to reduce impacts from dust control activities.

**Comment I14-6**

In conclusion, it is this commenter's opinion, the draft HCP does not advance the prospects of a future for the ODSVRA. As a practical matter, the HCP attempts to reinforce the notion of maintaining the status quo for the ODSVRA. In a post-Coastal Commission closure litigation period, it appears there is a limited amount of time to make major changes to the ODSVRA and its operations. Without specific changes and adaptations, some of which were dismissed in the HCP, permanent closure of the park to vehicles is becoming increasingly likely. Accordingly, there may be adverse economic implications from the closure of the ODSVRA. While it is unlikely the ODSVRA visitor-ship contributes the $500 million often cited, it could be responsible for as much as 10% of San Luis Obispo County's $1 billion hospitality and visitor-serving sector.

Response to Comment I14-6

The comment expresses opinion on vehicle recreation at Oceano Dunes. No specific comment is presented on the content of the HCP or analysis in the EIR.

See Master Response 5: Public Works Plan regarding the outcome of recent Coastal Commission litigation.

### 3.1.29 Comment Letter I15. Karen Emanual

#### Comment I15-1

I am greatly concerned about the status of endangered species under the Habit Conservation report. I am here to advocate for their consideration and inclusion.

Response to Comment I15-1

The HCP considers and includes four animal species and six plant species listed under FESA, and two animal species that candidates for listing under FESA. See HCP Chapters 1, 3, 4, and 5 for more information.

### 3.1.30 Comment Letter I.16 John Farhar

#### Comment I16-1

The HCP needs to strenuously protect the species, not finding a work around. The violations cannot continue, complete closure should proceed any more losses if there are no 100% protective alternatives implemented. Vehicles just driving on the beach continuously impact the snowy plovers, catastrophically scattering families of plovers and committing vehicle strikes, many of which could be unknown, washed away with the tide.

Response to Comment I16-1

CDPR has a mandate to balance the need to protect California's natural resources, while providing recreational access to the parks. See Master Response 3: HCP with CDPR Mission and Mandates for more information.

Motorized recreation (CA-1) is an authorized ongoing activity in the HCP and is not analyzed in the EIR as a proposed new visitor use or project activity. Impacts of existing activities are discussed HCP Chapter 4 and EIR Appendix D. See Master Response 6: CEQA Baseline and Scope for more information. Also see Master Response 14: Discussion of Alternatives regarding consideration of a No Vehicle Alternative.

CDPR assumes that most take instances are accounted for based on past levels of monitoring. See Master Response 2: HCP Proposed Levels of Permitted Take for more information.

#### Comment I16-2

The vehicles crossing Arroyo Grande Creek is unconscionable with the Endangered South Central Coast Steelhead trout occupying the creek and spawning in and out through the section driven through by most vehicles driving on the beach. The HCP must address this impact comprehensively and implement more of the feasible alternatives."

Response to Comment I16-2

Impacts to Arroyo Grande Creek resources due to vehicle crossing are effects of the existing park operation and are baseline conditions. Biological effects of existing park operations are described in EIR Volume 3 Appendix D.

See Master Response 6: CEQA Baseline and Scope regarding vehicle crossing at Arroyo Grande Creek.

**Comment I16-3**

State Parks needs to prioritize finding better suited sites for off road recreation after the state collecting all those registration fees for all these years. The question of where those fees are allocated should be discussed.

Response to Comment I16-3

Comment expresses general opinion on OHV recreation at Oceano Dunes. No specific comment is presented on the content of the HCP or analysis in the EIR. No further response is required.

### 3.1.31 Comment Letter I.17 G. Han

**Comment I17-1**

I am fine with off road vehicles in designated areas but not at or on the beach. This is going too far when I live four miles from this area and can hear the engines roaring. Many of these vehicles have poor or no muffler equipment and are not equipped with clean fuel burning carburetors. Also driving on the beach is a fun but antiquated activity that should be abandoned asap.

Response to Comment I17-1

Comment expresses general opinion on OHV recreation at Oceano Dunes. No specific comment is presented on the content of the HCP or analysis in the EIR.

Motorized recreation (CA-1) is an authorized ongoing activity in the HCP and is not analyzed in the EIR as a proposed new visitor use or project activity. Impacts of existing activities are discussed HCP Chapter 4 and EIR Appendix D. See Master Response 6: CEQA Baseline and Scope for more information.

Oceano Dunes SVRA is a park unit designated for OHV recreation. See Master Response 3: HCP with CDPR Mission and Mandates for more information.

### 3.1.32 Comment Letter I18. Ed Harris

**Comment I18-1**

As a resident of the Central Coast in Nipomo, I find the DEIR and HCP inadequate and they insufficiently address the environmental impacts of the Oceano Dunes State Vehicular Recreation Area. The DEIR and HCP fail to protect threatened species and mitigate impacts to public and environmental health. They clearly prioritize vehicle recreation instead of habitat conservation, not meeting the requirements of an HCP.

Response to Comment I18-1

See response to comment I2-1 above.

**Comment I18-2**

Please change the Draft EIR and HCP to include: Decrease the allotted take of the Western Snowy Plover and ESA-listed species; Increasing the duration and number of protection measures, and return to year-round exclosures protecting the plover and California least tern.

Include analysis of the environmental impacts of foreseeable potential future projects, including a southern entrance to the ODSVRA and development around Oso Flaco Lake.

Response to Comment I18-3

See response to comment I2-2 above.

**Comment I18-3**

This matters to me because...I believe the health of the ocean and the wildlife in the unique Oceano Dunes complex is more important than the recreational opportunities of a limited number of OHV enthusiasts. I am a coastal resident and have seen the devastation caused by vehicles on the dunes and beach. I live near Oceano Dunes and have been impacted by poor air quality. I do not feel safe to be on the beach with vehicles present.

Response to Comment I18-3

See response to comment I2-3 above.

### 3.1.33 Comment Letter I.19 Anita and Rob Hawkins

**Comment I19-1**

We live about a mile and a half from the Oceano dunes. Motorized vehicles in the dunes send sand into the air affecting air quality, and they also create noise pollution. These activities are clearly discernible from our home. It is especially prevalent on the weekends and holidays.

This activity must surely affect the wildlife, including the Snowy Plovers, much more than it does us. It's time to end it. Thank you for considering this issue.

Response to Comment I19-1

Comment expresses general opinion on OHV recreation at Oceano Dunes. No specific comment is presented on the content of the HCP or analysis in the EIR.

Motorized recreation (CA-1) is an authorized ongoing activity in the HCP and is not analyzed in the EIR as a proposed new visitor use or project activity. Impacts of existing activities are discussed HCP Chapter 4 and EIR Appendix D. See Master Response 6: CEQA Baseline and Scope for more information.

Oceano Dunes SVRA is a park unit designated for OHV recreation. See Master Response 3: HCP with CDPR Mission and Mandates for more information.

### 3.1.34 Comment Letter I20. Diane Heckman

**Comment I20-1**

Please prioritize the health of the snowy plovers and least turns over motorized recreational activities. It's very disturbing that the habitat is being disrupted. Snowy plovers are faithful to the nest site. They want to return to the exact site. As you might imagine, having an ATV drive over their nests is very bad for the species. I'm a birder from Santa Cruz. We need to share the beaches with the wild animals who depend on them for their very lives."

Response to Comment I20-1

Comment expresses general opinion on OHV recreation at Oceano Dunes and its effects on SNPL and CLTE. No specific comment is presented on the content of the HCP or analysis in the EIR.

The number of breeding SNPL adults and CLTE breeding pairs have trended upward in the HCP area over the past 25 years. See Master Response 1: HCP Purpose and Issuance Criteria for more information.

Oceano Dunes SVRA is a park unit designated for OHV recreation. See Master Response 3: HCP with CDPR Mission and Mandates for more information.

Motorized recreation (CA-1) is an authorized ongoing activity in the HCP and is not analyzed in the EIR as a proposed new visitor use or project activity. Impacts of existing activities are discussed HCP Chapter 4 and EIR Appendix D. See General Response 6: CEQA Baseline and Scope.

### 3.1.35 Comment Letter I21. Dr. Glen Holstein

#### Comment I21-1

I strongly support managing Nipomo Dunes Park to maximally protect its endangered and sensitive animal and plant species. I formerly worked there and am familiar with the dunes' very sensitive habitats, great biodiversity, and great need for better protection. After my work at the dunes and inspired by them I earned a PhD in Botany at UC Davis and participated in many successful conservation projects including helping creation of Carizo Plain and Berryessa-Snow Mountain national monuments. I also visited many of earth's greatest nature areas but never found any like the Nipomo Dunes and the amazing habitats they provide for so many rare and sensitive species. Please give them maximum protection!

Response to Comment I21-1

The comment expresses opinion on the protecting special-status species and habitat. No specific comment is presented on the content of the HCP or analysis in the EIR.

CDPR has a mandate to balance the need to protect California's natural resources, while providing recreational access to the parks. See Master Response 3: HCP with CDPR Mission and Mandates for more information.

### 3.1.36 Comment Letter I22. Heather Howell

#### Comment I22-1

"RESPECT ALL LIVING BEINGS EQUALLY. Allowing Vehicles to destroy habitat of a species affects the entire web of life, INCLUDING we proud, mindless humans.

There are many reasonable ways to handle this issue and ongoing stand-off while maintaining the Agency's Mission and effectiveness. Seasonal access, limit on daily traffic, cap on weight of vehicles and load, HIGH7 Value ticketing for violations (word gets out- people police themselves), etc. Vehicular access to a local natural treasure, unfairly deprives residents their personal freedom to SAFELY enjoy untrammeled Nature. It also devalues their personal investment in their homes and community, while allowing individuals from elsewhere to damage what they have no stake in, and contribute nothing to. Please, develop some Backbone, to PREVENT a Vocal, Aggressive, Selfish Minority from overwhelming the Rights and Peace of the Majority and VOICELESS.

It's within your Authority to ACT on YOUR enlightened vision for our County and State, for 7 Generations Forward, not just today. That is true LEADERSHIP, and what we hope and Pray you will RISE TO FULFILL."

Response to Comment I22-1

Comment expresses general opinion on OHV recreation at Oceano Dunes. No specific comment is presented on the content of the HCP or analysis in the EIR.

CDPR has a mandate to balance the need to protect California's natural resources, while providing recreational access to the parks. See Master Response 3: HCP with CDPR Mission and Mandates for more information.

### 3.1.37 Comment Letter I23. Lucy Hunt-Pierson

#### Comment I23-1

Protect the endangered snowy plovers by totally restricting automotive traffic within their breeding grounds.

Response to Comment I23-1

SNPL nesting areas are seasonally closed to recreation in the HCP area, see HCP section 2.2.2.1.1 for more information.

### 3.1.38 Comment Letter I24. Carla Hurt

#### Comment I24-1

As a resident of the Central Coast in GROVER BEACH , I find the DEIR and HCP inadequate and they insufficiently address the environmental impacts of the Oceano Dunes State Vehicular Recreation Area. The DEIR and HCP fail to protect threatened species and mitigate impacts to public and environmental health. They clearly prioritize vehicle recreation instead of habitat conservation, not meeting the requirements of an HCP.

Response to Comment I24-1

See response to comment I2-1 above.

#### Comment I24-2

Please change the Draft EIR and HCP to include: Comprehensive analysis and consideration of the no-vehicle alternative; Decrease the allotted take of the Western Snowy Plover and ESA-listed species; Increasing the duration and number of protection measures, and return to year-round exclosures protecting the plover and California least tern.. Include analysis of the environmental impacts of foreseeable potential future projects, including a southern entrance to the ODSVRA and development around Oso Flaco Lake.

Response to Comment I24-2

See response to comment I2-2 above.

#### Comment I24-3

This matters to me because…This matters to me because: I am a hiker, ocean kayaker and the health of the ocean and our coast directly affects my activities. I am a coastal resident and have seen the devastation caused by vehicles on the dunes and beach. I live near Oceano Dunes and have been impacted by poor air quality. I live in Oceano/Grover Beach and do not feel safe to be on the beach with vehicles present.

Response to Comment I2-3

See response to comment I2-3 above.

### 3.1.39 Comment Letter I25. Maryan Infield

#### Comment I25-1

As a resident of San Luis Obispo, please change the Draft EIR and HCP to include protection for the Snowy Plover and discontinue the use of off road vehicles on Oceano beaches.

Response to Comment I25-1

The comment expresses opinion on vehicle recreation at Oceano Dunes. No specific comment is presented on the content of the HCP or analysis in the EIR.

CDPR has a mandate to balance the need to protect California's natural resources, while providing recreational access to the parks. See Master Response 3: HCP with CDPR Mission and Mandates for more information.

Motorized recreation (CA-1) is an authorized ongoing activity in the HCP and is not analyzed in the EIR as a proposed new visitor use or project activity. Impacts of existing activities are discussed HCP Chapter 4 and EIR Appendix D. See General Response 6: CEQA Baseline and Scope. Also see Master Response 14: Discussion of Alternatives regarding consideration of a No Vehicle Alternative.

### 3.1.40 Comment Letter I26. Cinda Johansen

#### Comment I26-1

I hope that in fact and actions that all of the endangered species are taken and respected. Once a pristine protected area is disturbed it is difficult to restore to its original.

Response to Comment I26-1

The comment expresses opinion on protection of endangered species. No specific comment is presented on the content of the HCP or analysis in the EIR.

CDPR has a mandate to balance the need to protect California's natural resources, while providing recreational access to the parks. See Master Response 3: HCP with CDPR Mission and Mandates for more information.

### 3.1.41 Comment Letter I27. Kathy Johnson

#### Comment I27-1

I support limiting or banning off-road vehicles in the dunes. During 2020 we would walk that stretch to the beach and it was pristine. We saw so many new species of birds and we ever had in the past 20 years that we've lived here. How could it not have a negative impact driving a vehicle in nature?

Response to Comment I27-1

See Master Response 14: Discussion of Alternatives regarding consideration of a No Vehicle Alternative. The HCP area has been fully reopened to recreation following the Covid-19 closure.

Motorized recreation (CA-1) is an authorized ongoing activity in the HCP and is not analyzed in the EIR as a proposed new visitor use or project activity. Impacts of existing activities are discussed HCP Chapter 4 and EIR Appendix D. See General Response 6: CEQA Baseline and Scope. Also see Master Response 14: Discussion of Alternatives regarding consideration of a No Vehicle Alternative.

CDPR has a mandate to balance the need to protect California's natural resources, while providing recreational access to the parks. See Master Response 3: HCP with CDPR Mission and Mandates for more information.

### 3.1.42 Comment Letter I28. Kayaker Paddler

#### Comment I28-1

GET THE MOTORIZED VEHICLES OFF THE DUNES!!!!!!!!!!!!!

Response to Comment I28-1

The comment expresses opinion on vehicle recreation at Oceano Dunes. No specific comment is presented on the content of the HCP or analysis in the EIR.

Motorized recreation (CA-1) is an authorized ongoing activity in the HCP and is not or analyzed in the EIR as a proposed new visitor use or project activity. Impacts of existing activities are discussed HCP Chapter 4 and EIR Appendix D. See General Response 6: CEQA Baseline and Scope. Also see Master Response 14: Discussion of Alternatives regarding consideration of a No Vehicle Alternative.

### 3.1.43 Comment Letter I29. Lisa Ann Kelley and Family

#### Comment I29-1

My family and I urge DPR to make certain that, as regards Oceano Dunes, the Endangered Species Act is strictly upheld. We believe that wildlife habitat and its inhabitants need any and all possible protection It is our hope that you will do more than just attempt to mitigate negative impact, but also strive your utmost to be proactive in protecting habitat and species negatively affected by any recreational use of the dunes.

We have never thought it was a good idea to allow off-road use of The Oceano Dunes. To allow such vehicle use goes against any reasonable hope for keeping the dunes safe and environmentally friendly for innumerable species. Allowing motorcycles, ATVs, dune buggies and four-wheel drive vehicles to continue to threaten the well-being of so many different animals and plants is a travesty. We understand that this Draft EIR is all about compromise, but we hope that one day soon everyone involved will realize that sensitive habitat and endangered species trumps off-road recreation.

Response to Comment I29-1

The comment expresses opinion on vehicle recreation at Oceano Dunes. No specific comment is presented on the content of the HCP or analysis in the EIR.

Motorized recreation (CA-1) is an authorized ongoing activity in the HCP and is not analyzed in the EIR as a proposed new visitor use or project activity. Impacts of existing activities are discussed HCP Chapter 4 and EIR Appendix D. See General Response 6: CEQA Baseline and Scope. Also see Master Response 14: Discussion of Alternatives regarding consideration of a No Vehicle Alternative.

CDPR has a mandate to balance the need to protect California's natural resources, while providing recreational access to the parks. See Master Response 3: HCP with CDPR Mission and Mandates for more information.

### 3.1.44 Comment Letter I30. Karl Kempton

#### Comment I30-1

I am writing to state my disagreement with the proposed Draft Habitat Conservation Plan for the California Department of Parks and Recreation Oceano Dunes District. I have lived in Oceano since 1983 and in South County since 1974. I constantly walk the beach unless traffic is too overwhelming preventing a safe experience. The proposed summarized goals seem to suggest the issue will solve the severe problems caused by off road traffic on the beach and in the dunes, as stated by the Purpose and Goals:

[…]

However, the actual proposed “solutions” do not. The proposed “solutions” are upside down and in direct opposition to the stated goals of California Department of Parks and Recreation: […]

Response to Comment I30-1

The comment expresses opinion on vehicle recreation at Oceano Dunes. No specific comment is presented on the content of the HCP or analysis in the EIR. No further response is required.

See Master Response 3: HCP with CDPR Mission and Mandates for information on accommodating recreation and conservation.

#### Comment I30-2

The mission statement is clear, protection of biodiversity, natural and cultural resources eclipse recreation. For decades California Department of Parks and Recreation has placed recreation over protection of biodiversity, natural and cultural resources in the Oceano-Nipomo-Guadalupe Dune Complex and most dramatically within the Pismo State Beach and Oceano Dunes State Vehicular Recreation Area (SVRA) all the while ignoring the designation of the Oceano-Nipomo-Guadalupe Dune Complex as National Natural Landmark designated in 1974. It was designated a National Natural Landmark status for its status as the largest, relatively undisturbed coastal dune tract in California.

The designation was based on several unique geological and biological factors:

• Geological Significance: It is the largest remaining dune system south of San Francisco and the second largest in California, spanning an 18-mile stretch of coastline. The area includes the tallest sand dunes on the U.S. West Coast, reaching heights of up to 550 feet.

• High Endemism: The dunes exhibit one of the highest rates of endemism (species found nowhere else) of any dune system in North America.

• Ecological Diversity: The complex supports a unique ""dune-lagoon"" ecosystem that serves as a critical habitat for over 120 rare species of plants and animals, including more than 18 federally endangered species.

• Critical Habitat: It provides vital nesting and breeding grounds for federally protected species such as the Western snowy plover and the California least tern, which were listed as endangered around the same time in 1970.

• Conservation Priority: In the 1970s and 1980s, the U.S. Fish and Wildlife Service ranked the area as the most unique and fragile ecosystem in California, placing it first on a list of 49 habitat areas in need of protection.

The dune complex is now adjacent to the recently designated Chumash Heritage National Marine Sanctuary. The reason for High Endemism, Ecological Diversity, and Critical Habitat values exist because this dune complex formed within the northern portion of an oceanographic and meteorological transition zone. Many species interact with the beach and tidal areas as part of their natural range. They have been—and continue to be— harassed and denied access because of vehicle traffic on the beach."

Response to Comment I30-2

Motorized recreation (CA-1) is an authorized ongoing activity in the HCP and is not analyzed in the EIR as a proposed new visitor use or project activity. Impacts of existing activities are discussed HCP Chapter 4 and EIR Volume 3 Appendix D. See General Response 6: CEQA Baseline and Scope for more information.

All potential impacts on biological resources and tribal cultural resources from new and future activities covered by the HCP are found to be less than significant, see EIR Chapters 6 and 7 for more information.

The USFWS is the regulatory authority under FESA Section 7 to assess impacts to critical habitat from all proposed ITP covered activities identified in the HCP. The EA for the Oceano Dunes District HCP concludes the impacts on critical habitat from all ITP covered activities, which includes the project activities evaluated in this EIR, would not be significant. See Master Response 7: Reduction of Boneyard and 6 Exclosures (CA-50).

**Comment I30-3**

The year-long closure due to COVID allowed the beach to return to a natural, wild state, clearly demonstrating the severe impacts of beach vehicle traffic. Foredunes quickly began to reform. Species not seen for years returned to previously denied ranges, and populations of regularly observed species increased. When the beach reopened after the year-long closure, in less than eight hours or so all reforming dune features were flattened, returning clams were crushed, and returning species fled. This is further proof that State Parks places recreation above all else in Pismo State Beach and the Oceano Dunes State Vehicular Recreation Area (SVRA). Additional evidence is found within the EIR itself, which prioritizes recreation over the protection of biodiversity and natural and cultural resources. In particular the request for permission of formalizing the “taking”(killing or injuring) of endangered species by vehicles demonstrates this priority.

Response to Comment I30-3

The comment expresses personal observations of beach conditions during a time of closure to vehicles. Park operations include vehicle use as baseline conditions. See Master Response 6: CEQA Baseline and Scope. See Master Response 3: HCP with CDPR Mission and Mandates regarding accommodating recreation and conservation. See Master Response 1: HCP Purpose and ITP Issuance Criteria and Master Response 2: HCP Proposed Levels of Permitted Take regarding take. No specific comment is presented on the content of the HCP or analysis in the EIR. No further response is required.

**Comment I30-4**

The EIR appears to be written by someone—or multiple authors—schooled in agnotology, the study of how ignorance or doubt is deliberately produced, often through the dissemination of deceptive or misleading scientific information. Where in California State law does recreation

override (pun intended) the California Environmental Quality Act (CEQA) or the Federal Endangered Species Act of 1973?

• Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated, or

• Include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse effect on the environment.

A nice try. How many people from outside the area would actually come here to use local neighborhood facilities? This appears to be another example of the dissemination of deceptive or misleading information. See below the attached photograph taken during the COVID shutdown. This scene illustrates what a normal day should be on our beach rather than an exception caused by the COVID beach closure to vehicles.

It is time for State Parks to enforce its own stated mission guidelines at Pismo State Beach and the Oceano Dunes State Vehicular Recreation Area (SVRA), and to enhance the Oceano–Nipomo–Guadalupe Dune Complex National Natural Landmark in coordination with the Chumash Heritage National Marine Sanctuary.

Response to Comment I30-4

See Master Response 15: Recreation Impact Significance Thresholds regarding use of significance thresholds for recreation in addition to those identified in CEQA Guidelines Appendix G.

The HCP area has been fully reopened to recreational use since the Covid-19 closure.

Protection of natural and cultural resources and provision of outdoor recreational opportunities are both part of CDPR's Mission Statement. See Master Response 3: HCP with CDPR Mission and Mandates for more information.

### 3.1.45 Comment Letter I31. Margaret Kidney

#### Comment I31-1

You know this is the home owners reaching for anything to shut down public access to ""their"" beach!! Prima donnas don't want anybody messing up their views. The plovers gave been given space for 25 years and are not repopulating at the given numbers expected. Stop using them as an excuse to limit public access. A reporter needs to do an indepth report on this and expose the truth of the lies these people are trying to feed the public it's ridiculous.

Response to Comment I31-1

The comment expresses opinion . No specific comment is presented on the content of the HCP or analysis in the EIR.

The HCP does not propose any new projects that would adversely impact access to coastal recreation. New covered activities would benefit recreation access by developing new or improving existing facilities (i.e., reduction in seasonal exclosures [CA-50], limited trail riding [CA-42]), see HCP sections 2.2.5.3 and 2.2.5.11 and EIR Chapter 2 for more information. CA-50 and CA-42 (if implemented) are expected to result in a net gain in OHV recreation access compared to existing conditions.

### 3.1.46 Comment Letter I32. Lorraine Kitman

#### Comment I32-1

I have lived in Arroyo Grande for almost 50 years and walking on or by the beach (Oceano, Grover, Pismo, Avila) has been one of my favorite activities. I urge State Parks to abide by the Endangered Species Act and pro-actively protect the Western Snowy Plover habitat, including Plover nesting areas that are beyond the spots set aside to protect them. Please keep the beach a place where endangered species like the Plover can thrive enough to overcome being endangered.

Response to Comment I32-1

The comment does not present any new substantial evidence for CDPR to consider or identify specific deficiencies in the EIR analysis. The HCP presents a comprehensive conservation program and the EIR analysis has determined the impacts on special-status species would be less than significant.

CDPR has a mandate to balance the need to protect California's natural resources, while providing recreational access to the parks. See Master Response 3: HCP with CDPR Mission and Mandates for more information.

### 3.1.47 Comment Letter I33. Barbara Kohler

#### Comment I33-1

Save the birds!

Response to Comment I33-1

The comment expresses opinion on protection of birds. No specific comment is presented on the content of the HCP or analysis in the EIR. No further response is required.

### 3.1.48 Comment Letter I34. Cara Koppel

#### Comment I34-1

I am writing to say that protection of animal's always needs to come before profit and recreation. I strongly support anything that needs to be done to protect wildlife, including the wildlife at Oceano Dunes.

Off-roading in an area so close to the a shoreline is likely already not good for the environment, sea life and birds. California State Park's knew better than to do anything to tamper with the nesting of the Snowy Plover and I strongly agree with this Judge's ruling. I encourage State Parks to do whatever is required to protect all wildlife at our State Park's.

Response to Comment I34-1

The comment expresses opinion on vehicle recreation at Oceano Dunes. No specific comment is presented on the content of the HCP or analysis in the EIR.

Motorized recreation (CA-1) is an authorized ongoing activity in the HCP and is not analyzed in the EIR as a proposed new visitor use or project activity. Impacts of existing activities are discussed HCP Chapter 4 and EIR Appendix D. See General Response 6: CEQA Baseline and Scope.

CDPR has a mandate to balance the need to protect California's natural resources, while providing recreational access to the parks. See Master Response 3: HCP with CDPR Mission and Mandates for more information.

### 3.1.49 Comment Letter I35. D.M. Kuchins

#### Comment I35-1

No off road vehicles. More native species, endangered or not. Pants and other creatures also killed or driven from changed habitat. Those vehicles are also a dangerous, noisy, nuisance. Prevent quiet, peaceful use of space by others.

Response to Comment I35-1

The comment expresses opinion on vehicle recreation at Oceano Dunes. No specific comment is presented on the content of the HCP or analysis in the EIR.

Motorized recreation (CA-1) is an authorized ongoing activity in the HCP and is not analyzed in the EIR as a proposed new visitor use or project activity. Impacts of existing activities are discussed HCP Chapter 4 and EIR Appendix D. See General Response 6: CEQA Baseline and Scope. Also see Master Response 14: Discussion of Alternatives regarding consideration of a No Vehicle Alternative.

CDPR has a mandate to balance the need to protect California's natural resources, while providing recreational access to the parks. See Master Response 3: HCP with CDPR Mission and Mandates for more information.

### 3.1.50 Comment Letter I36. Michael Kudrna

#### Comment I36-1

Open the other entrance to the dunes, and open more riding area away from where they nest. They don't nest too far from the beach. Charge 10 bucks for day pass and use the extra 5 for a desalinization through evaporation plant at the 76 grounds.

Placing people and birds that don't belong need an off highway park created the problems. There were no mention of plovers 100 years ago.

Response to Comment I36-1

The comment expresses opinion on vehicle recreation at Oceano Dunes. No specific comment is presented on the content of the HCP or analysis in the EIR.

A southern entrance to the SVRA was identified in the draft PWP. This project is not being actively pursued by CDPR and is not considered a reasonably foreseeable future project for consideration in the EIR, see Master Response 5: Public Works Plan for more information. CDPR evaluated changes to SVRA access and rejected them from further consideration in EIR Volume 1 section 9.1.3. See Master Response 14: Discussion of Alternatives for information on considered and rejected alternatives including changes to SVRA access routes.

CDPR has a mandate to balance the need to protect California's natural resources, while providing recreational access to the parks. See Master Response 3: HCP with CDPR Mission and Mandates for more information.

### 3.1.51 Comment Letter I37. Douglas Landau

#### Comment I37-1

I wonder, after reading the news:

- one article said the plovers like the 4"" depression made by OHV tires. Could it be that this ideal-nesting-spot-making offsets some or all of the deaths?

- Where and when vehicles are ousted, do predators then move in greater numbers, and eat plovers in numbers comparable to those killed by vehicles?

The numbers seem quite positive to me; and also, the numbers lost per year seem quite small. my first reaction is that the judge and public have had a knee-jerk reaction and not considered the issue carefully. But of course I am totally unqualified to say and cannot begin to address how many plovers there would be if all vehicular activity were banned.

Response to Comment I37-1

The comment expresses opinion on vehicle recreation at Oceano Dunes. No specific comment is presented on the content of the HCP or analysis in the EIR.

SNPL nests are typically found on flat, open areas of the back beach or backdunes where vegetation is sparse or non-existent. In the HCP area SNPL primarily nest in the seasonal exclosures. See HCP section 3.3.1 for more information. Also see HCP section 4.3.1.1.1 regarding the effects of OHV recreation on SNPL and Table 4-1 regarding SNPL mortality in the HCP area.

The effect of excluding vehicles from the HCP area on SNPL predation is unknown. CDPR's predator management strategy and methods have been successful at protecting breeding SNPL and CLTE in the HCP area, and it is likely that predation rates would be higher in the HCP area without predator management. See HCP section 2.2.2.1.2 and Master Response 9: Predation for more information on CDPR's predator management program.

### 3.1.52 Comment Letter I38. Cheryl Lewis

#### Comment I38-1

As a resident of the Central Coast in San Luis Obispo, I find the DEIR and HCP inadequate and they insufficiently address the environmental impacts of the Oceano Dunes State Vehicular Recreation Area. The DEIR and HCP fail to protect threatened species and mitigate impacts to public and environmental health. They clearly prioritize vehicle recreation instead of habitat conservation, not meeting the requirements of an HCP.

Response to Comment I38-1

See response to comment I2-1 above.

#### Comment I38-2

Please change the Draft EIR and HCP to include: Comprehensive analysis and consideration of the no-vehicle alternative; Decrease the allotted take of the Western Snowy Plover and ESA-listed species; Increasing the duration and number of protection measures, and return to year-round exclosures protecting the plover and California least tern. Include analysis of the environmental impacts of foreseeable potential future projects, including a southern entrance to the ODSVRA and development around Oso Flaco Lake.

Response to Comment I38-2

See response to comment I2-2 above.

**Comment I38-3**

This matters to me because I am a coastal resident and have seen the devastation caused by vehicles on the dunes and beach.

Response to Comment I38-3

See response to comment I2-3 above.

### 3.1.53 Comment Letter I39. Lupec2a@icloud.com

**Comment I39-1**

Welp, you keep voting in dumb ass liberal democrats this is what you get. This stupid ass bird is all over the United States coastlines not to include also our neighbors next door, Mexico. It's time to start using common sense and enjoy the lands that we have here to enjoy and stop worrying about some damb bird, my goodness people!! We have bigger problems in this land and in the world, stop the B.S already and start living a little g-wiz man!

Response to Comment I39-1

The comment expresses general opinion. No specific comment is presented on the content of the HCP or analysis in the EIR. No further response is required.

### 3.1.54 Comment Letter I.40 Rebecca McFarlane

**Comment I40-1**

I am a concerned citizen writing in to request a moratorium on vehicles allowed on beaches in the Pismo beach Océano dunes area. Considering the snowy plover continues to be at risk of extinction it is extremely important we honor their right to life and put a stop to humans recreational activities that put them at risk.

Response to Comment I40-1

The comment expresses opinion on vehicle recreation at Oceano Dunes. No specific comment is presented on the content of the HCP or analysis in the EIR.

Motorized recreation (CA-1) is an authorized ongoing activity in the HCP and is not analyzed in the EIR as a proposed new visitor use or project activity. Impacts of existing activities are discussed HCP Chapter 4 and EIR Appendix D. See General Response 6: CEQA Baseline and Scope. Also see Master Response 14: Discussion of Alternatives regarding consideration of a No Vehicle Alternative.

CDPR has a mandate to balance the need to protect California's natural resources, while providing recreational access to the parks. See Master Response 3: HCP with CDPR Mission and Mandates for more information.

### 3.1.55 Comment Letter I41. Linda Midkiff

**Comment I41-1**

Protecting the snowy plover should be a no-brainer. Off-roading in their nesting areas is not necessary or required for the health and safety of humans, but keeping the area free of vehicles

IS necessary and required for the health and safety of the birds. There are plenty of areas for offroaders to play. They don't need to be disturbing nesting areas. Keep them OUT!

Response to Comment I41-1

The comment expresses opinion on vehicle recreation at Oceano Dunes. No specific comment is presented on the content of the HCP or analysis in the EIR.

Motorized recreation (CA-1) is an authorized ongoing activity in the HCP and is not analyzed in the EIR as a proposed new visitor use or project activity. Impacts of existing activities are discussed HCP Chapter 4 and EIR Appendix D. See General Response 6: CEQA Baseline and Scope. Also see Master Response 14: Discussion of Alternatives regarding consideration of a No Vehicle Alternative.

CDPR has a mandate to balance the need to protect California's natural resources, while providing recreational access to the parks. See Master Response 3: HCP with CDPR Mission and Mandates for more information.

### 3.1.56 Comment Letter I42. Miller Terese

#### Comment I42-1

I am a resident of Oceano. Over the years Oceano has endured the increasing onslaught of the off-road vehicle drivers and endured the degradation of our local beaches, roads and wildlife. The State Parks and certain off-road businesses and entities (Friends of the Dunes, ASA, etc.), both here and elsewhere have begun a monolithic campaign to drown out local voices for the preservation of endangered species throughout the dunes complex.

The Oceano dunes is an integral part of the survival of several species. State parks personnel often classify plover strikes as "unknown cause of death" even when there is obvious evidence the bird/bird eggs/nesting chicks have been killed by a vehicle. Vehicle tracks have been wiped over or ignored thereby reducing the actual "take" numbers reported. This behavior has been sanctioned, even encouraged by top management in the Oceano Dunes SVRA. Oceano Dunes SVRA should not be given further "take" authorizations to further continue the demise of the plover population.

During the pandemic closure of the dunes complex, an increase in California costal snowy plover numbers showed that this particular subspecies cand affect a comeback from its perilous situation. I applaud the recognition from the recognition from the environmental protection agency to codify the rules regarding the Parks and their responsibility to preserve and protect all species with the jurisdiction of the Ocenao Dunes SVRA.

Please do not let the fate of Oceano dunes and its integral species die under the wheels of the OHV riders through obsequious deference to clubs, business and Ocenao Dunes SVRA."

Response to Comment I42-1

Motorized recreation (CA-1) is an authorized ongoing activity in the HCP and is not analyzed in the EIR as a proposed new visitor use or project activity. Impacts of existing activities are discussed HCP Chapter 4 and EIR Appendix D. See General Response 6: CEQA Baseline and Scope. Also see Master Response 3: HCP Proposed Covered Activities.

Though it is acknowledged that some mortalities may go undetected given the species' cryptic nature, CDPR does not obscure the cause of death of observed SNPL carcasses. See Master Response 2: HCP Proposed Levels of Permitted Take for more information.

See response to CBD comments O4-8 and O4-28 regarding the Covid-19 closure and SNPL nesting during that time.

### 3.1.57 Comment Letter I43. Carole Mintzer

#### Comment I43-1

The DEIR and HCP for Oceano Dunes seem to give priority to offroad vehicles to the detriment of endangered species that call the dunes their home. You need to go back to the drawing board and come up with a plan that considers a no-vehicle option and at the very least, increases protective measures for snowy plovers and other endangered species.

I live in Los Osos and had the great opportunity to visit Oceano Dunes when vehicles were prohibited during Covid. What a beautiful, serene place it was and should be again. I won't go there now because of the noise and recklessness of the offroad vehicles. Please make it a safe place for beach walkers again.

Response to Comment I43-1

The comment expresses opinion on vehicle recreation at Oceano Dunes. No specific comment is presented on the content of the HCP or analysis in the EIR. The HCP area has been fully reopened to recreation since the Covid-19 closure.

Motorized recreation (CA-1) is an authorized ongoing activity in the HCP and is not analyzed in the EIR as a proposed new visitor use or project activity. Impacts of existing activities are discussed HCP Chapter 4 and EIR Appendix D. See General Response 6: CEQA Baseline and Scope. Also see Master Response 14: Discussion of Alternatives regarding consideration of a No Vehicle Alternative.

CDPR has a mandate to balance the need to protect California’s natural resources, while providing recreational access to the parks. See Master Response 3: HCP with CDPR Mission and Mandates for more information.

### 3.1.58 Comment Letter I44. Rob Mohle

#### Comment I44-1

Beaches are sensitive wildlife habitat not public highways. Protect Oceano dunes from off-road vehicles.

Response to Comment I44-1

The proposed comment expresses opinion on the project. No specific comment is presented on the content of the HCP or the analysis in the EIR.

Motorized recreation (CA-1) is an authorized ongoing activity in the HCP and is not analyzed in the EIR as a proposed new visitor use or project activity. Impacts of existing activities are discussed HCP Chapter 4 and EIR Appendix D. See General Response 6: CEQA Baseline and Scope. Also see Master Response 14: Discussion of Alternatives regarding consideration of a No Vehicle Alternative.

CDPR has a mandate to balance the need to protect California’s natural resources, while providing recreational access to the parks. See Master Response 3: HCP with CDPR Mission and Mandates for more information.

### 3.1.59 Comment Letter I45. Linda Moran

#### Comment I45-1

As a resident of the Central Coast in Nipomo, I find the DEIR and HCP inadequate and insufficient in addressing the environmental impacts of the Oceano Dunes State Vehicular Recreation Area. The DEIR and HCP fail to adequately protect threatened species and to mitigate ongoing impacts to public health and environmental quality. As written, they prioritize vehicle recreation over habitat conservation and therefore do not meet the fundamental requirements of a Habitat Conservation Plan.

I urge the Department to consider a more balanced approach that protects sensitive dune habitats while addressing public access concerns. One potential compromise would be to allow limited vehicle access on designated beach areas while prohibiting vehicles in the dune ecosystem itself, where damage to habitat, wildlife, and air quality is most severe. This approach would better align recreation with conservation and reflect the intent of California's environmental protection laws.

Response to Comment I45-1

The comment makes a broad assertion regarding inadequate protection of coastal habitat and endangered species but does not provide any substantial evidence for CDPR consideration of how the EIR and HCP fail to adequately protect these resources. Additionally, the commenter states that particulate matter and noise affect residential areas, but does not identify a deficiency in the noise or air quality analysis in the EIR.

Oceano Dunes SVRA is a park unit designated for OHV recreation. See Master Response 3: HCP with CDPR Mission and Mandates for more information.

Motorized recreation (CA-1) is an authorized ongoing activity in the HCP and is not analyzed in the EIR as a proposed new visitor use or project activity. Impacts of existing activities are discussed HCP Chapter 4 and EIR Appendix D. See General Response 6: CEQA Baseline and Scope.

See Master Response 14: Discussion of Alternatives regarding consideration of alternatives that reduce or eliminate OHV recreation in the HCP area and why they are not considered in the EIR.

### 3.1.60 Comment Letter I46. Tom Newell

#### Comment I46-1

Biodiversity is important. When the humans were commanded to stay in there crates, the plovers expanded their domain. If a snowy plover were to nest at a house on the strand, would they lose their home because they are endangered? No that's ridiculous. Are the snowy plovers going to be eradicated because we push them back to their designated area? No of course not. Just because the humans were illegally sequestered to their homes does not mean they lose the area that was designated for them. It is a very awesome experience to drive and play in the sand. We have to protect the land, the wildlife, and the humans ability to play.

Response to Comment I46-1

The proposed comment expresses opinion on the project. No specific comment is presented on the content of the HCP or the analysis in the EIR.

CDPR has a mandate to balance the need to protect California's natural resources, while providing recreational access to the parks. See Master Response 3: HCP with CDPR Mission and Mandates for more information.

### 3.1.61 Comment Letter I47. John and Nancy Ondrejka

#### Comment I47-1

As residents of San Luis Obispo county who live about 2 miles from the dunes, we are shocked to learn of our State Parks continued support for the ATV vehicles. Off-road vehicles cause destruction of sensitive habitat and the killing of endangered species. Additionally, particulate pollution and noise from unsupervised ATV vehicles allowed to ride late into the night (well past the posted hours) affect widespread residential areas. We believe this special place needs to be protected from all ATV riding. This would actually encourage more people to visit and enjoy the natural beauty of the dunes.

Response to Comment I47-1

The comment expresses opinion on vehicle recreation at Oceano Dunes. No specific comment is presented on the content of the HCP or analysis in the EIR.

Motorized recreation (CA-1) is an authorized ongoing activity in the HCP and is not analyzed in the EIR as a proposed new visitor use or project activity. Impacts of existing activities are discussed HCP Chapter 4 and EIR Appendix D. See General Response 6: CEQA Baseline and Scope. Also see Master Response 14: Discussion of Alternatives regarding consideration of a No Vehicle Alternative and Night Closure Alternative.

Pismo State Beach and Oceano Dunes SVRA park units provide both motorized and non-motorized recreation opportunities. Large areas of the HCP area are designated for pedestrian use only with motorized use prohibited (e.g., Pismo State Beach north of Grand Avenue, Pismo Dunes Natural Preserve, and Oso Flaco Lake area). See Master Response 3: HCP with CDPR Mission and Mandates for more information.

### 3.1.62 Comment Letter I48. Kathleen Oneill

#### Comment I48-1

Save the snowy plovers any way you can. Shame on State Parks for favoring vehicles over this endangered species.

Response to Comment I48-1

The proposed comment expresses opinion on the project. No specific comment is presented on the analysis in the EIR.

Motorized recreation (CA-1) is an authorized ongoing activity in the HCP and is not analyzed in the EIR as a proposed new visitor use or project activity. Impacts of existing activities are discussed HCP Chapter 4 and EIR Appendix D. See General Response 6: CEQA Baseline and Scope.

CDPR has a mandate to balance the need to protect California's natural resources, while providing recreational access to the parks. See Master Response 3: HCP with CDPR Mission and Mandates for more information.

### 3.1.63 Comment Letter I49. Ellie Owen

#### Comment I49-1

Please keep vehicles off the dunes to protect wildlife and native plants.

Response to Comment I49-1

The proposed comment expresses opinion on the project. No specific comment is presented on the analysis in the EIR.

Motorized recreation (CA-1) is an authorized ongoing activity in the HCP and is not analyzed in the EIR as a proposed new visitor use or project activity. Impacts of existing activities are discussed HCP Chapter 4 and EIR Appendix D. See General Response 6: CEQA Baseline and Scope.

CDPR has a mandate to balance the need to protect California's natural resources, while providing recreational access to the parks. See Master Response 3: HCP with CDPR Mission and Mandates for more information.

### 3.1.64 Comment Letter I50. Anne Palyok

#### Comment I50-1

I am glad the judge ruled in favor of the protection of the Plovers. I am glad to see a judge ruling according to the law. I wouldn't think Plovers nest year round so why cant you close off those sections during nesting season? Being a bird lover i hop you can reach conclusion that everyone will.be happy with.

Response to Comment I50-1

The commenter makes general comments about a judge's ruling and expresses opinion. No specific comment is presented on the content of the HCP or the analysis in the EIR.

SNPL nesting areas are closed to recreation during the nesting season, see HCP section 2.2.2.1.1 for more information. Also see Master Response 7: Reduction of Boneyard and 6 Exclosures (CA-50).

CDPR has a mandate to balance the need to protect California's natural resources, while providing recreational access to the parks. See Master Response 3: HCP with CDPR Mission and Mandates for more information.

### 3.1.65 Comment Letter I51. Juan Manuel Perez Salazar

#### Comment I51-1

Nice letter well done. i hope they can see behound their thinking.

Response to Comment I51-1

The proposed comment expresses opinion on the project. No specific comment is presented on the analysis in the EIR. No further response is required.

### 3.1.66 Comment Letter I52. Amy Peters

#### Comment I52-1

I've been a resident of the central coast for over 40 years now. I attended Cal Poly and was gone for only a few years while I finished my degree at Sf state. I had switched my major to metal arts

and jewelry design and Cal Poly didn't offer that degree. In that time I was back home in Palo Alto, I volunteered at the 1990 Earth Day international headquarters for its 20th anniversary. While there I was responsible for reading letters from people around the world talking about environmental destruction, habitat and animal losses. One story in particular struck me and has stuck with me since then. The Exxon Valdez accident and its ramifications on nature and animals alike. All of this to say… we don't have to have a disaster to know we are harming our wildlife by continuing to allow dune driving. So many beaches have been closed to driving around the world, it's time ours is as well. It's not just about the Snowy Plover, but they're endangered and once lost, they will be lost forever. In addition it's time to protect the habitat and environment for all of our creatures great and small. I believe the beauty of our area will continue to draw tourists without any losses of revenue. As a business owner here I know that is important but financial gains can't outweigh environmental impact. While I am sympathetic to off roading enthusiasts the time has come for them to find a new place to explore and play without disturbing endanger species.

Response to Comment I52-1

The proposed comment expresses opinion on the project. No specific comment is presented on the content of the HCP or the analysis in the EIR.

Motorized recreation (CA-1) is an authorized ongoing activity in the HCP and is not analyzed in the EIR as a proposed new visitor use or project activity. Impacts of existing activities are discussed HCP Chapter 4 and EIR Appendix D. See General Response 6: CEQA Baseline and Scope.

CDPR has a mandate to balance the need to protect California's natural resources, while providing recreational access to the parks. See Master Response 3: HCP with CDPR Mission and Mandates for more information.

### 3.1.67 Comment Letter I53. Charlie Porter

#### Comment I53-1

Close the dunes protect the plover.

Response to Comment I53-1

The proposed comment expresses opinion on the project. No specific comment is presented on the content of the HCP or the analysis in the EIR.

CDPR has a mandate to balance the need to protect California's natural resources, while providing recreational access to the parks. See Master Response 3: HCP with CDPR Mission and Mandates for more information.

### 3.1.68 Comment Letter I54. Linda Rawls

#### Comment I54-1

Why would the state park rangers even think to open during nest season!!! Can't they wait!!! It's not rocket science!!! Then both would be happy i suppose.but i fully aggree they violated and they knew they did!!

Response to Comment I54-1

The comment makes a broad assertion regarding inadequate protection of birds during nesting season but does not provide any substantial evidence for CDPR consideration of how the EIR

analysis of impacts to nesting birds is inadequate. As summarized in Table S-1 of the EIR, project actions would not impair the continuation of successful nesting seasons. See Master Response 7: Reduction of Boneyard and 6 Exclosures (CA-50).

### 3.1.69 Comment Letter I55. Kristin Righetti

#### Comment I55-1

I am a resident of San Luis Obispo that enjoys walking the beach at Pismo as well as hiking in Oceano Dunes. I especially enjoyed my time there during Covid when vehicle traffic was halted and had hoped that would continue to be the case. This is an extremely fragile ecosystem that does not tolerate the type of abuse that the State Parks has allowed to occur. They have proven that they are not good stewards of this special place and certainly their actions regarding the Snowy Plover are deplorable. It is high time to step up protections for this little shore bird and the delicate area it calls home.

Response to Comment I55-1

The comment makes a broad assertion regarding inadequate protection of coastal habitat and SNPL but does not provide any substantial evidence for CDPR consideration of how the EIR analysis of impacts to SNPL is inadequate.

CDPR has a mandate to balance the need to protect California's natural resources, while providing recreational access to the parks. See Master Response 3: HCP with CDPR Mission and Mandates for more information.

### 3.1.70 Comment Letter I56. Mary Lou Rosczyk

#### Comment I56-1

The core question is whether camping and OHV use, which have been historically allowed in Pismo State Beach and Oceano Dunes SVRA park units should continue to be allowed and even expanded. My answer to this question is absolutely NOT. There are many activities which were once allowed in California that are no longer legal or desirable. California's population demands that OHV use upon California/s precious beaches should be one of those activities. Additionally, beach camping should definitely be controlled and limited. Federal and state listed or threatened species occur or potentially occur on these beaches. Among them are the Western Snowy Plover, California Least Tern and Tidewater Goby, as well as six listed plant species. Additional federally proposed or threatened species also occur in the area. The proposed mitigations for all of the Alternatives including the Preferred Alternative offer minimal protection at best and assured extirpation at worst for the animals and plants inhabiting California's beaches. The impact analysis for the Preferred Alternative states that "There are no significant unavoidable impacts." The key word in this statement is "unavoidable"—implying a necessary evil. The California Coastal Commission stated that the Proposed Alternative presents inconsistencies as identified by the California Coastal Act and that these inconsistencies remain unresolved. In fact, the California Coastal Commission proposed "modifying park operations including but not limited to eliminating OHV use over a 3-year transition period." The Coastal Commission was sued by stakeholders in July 2023. They were successful and the California Court of Appeals upheld the stakeholders suit. However, the suit was upheld upon narrow procedural grounds NOT upon the merits of the suit. There are plenty of other areas in California where OHV use and camping are allowed. In deference to California's threatened and endangered species, the beach should not be one of them.

Response to Comment I56-1

The comment expresses general opinion about motorized vehicle recreation at Pismo State Beach and Oceano Dunes SVRA. Motorized recreation (CA-1) is an authorized ongoing activity in the HCP and is not analyzed in the EIR as a proposed new visitor use or project activity. Impacts of existing activities are discussed HCP Chapter 4 and EIR Appendix D. See General Response 6: CEQA Baseline and Scope.

CDPR has a mandate to balance the need to protect California's natural resources, while providing recreational access to the parks. See Master Response 3: HCP with CDPR Mission and Mandates.

The number of breeding SNPL adults and CLTE breeding pairs have trended upward in the HCP area over the past 25 years. See Master Response 1: HCP Purpose and ITP Permit Issuance for more information.

The commenter is correct that no significant and unavoidable impacts are identified in the EIR, all potential impacts of new covered activities in the HCP are found to be less than significant or less than significant with mitigation incorporated.

See Master Response 4: Consistency with Coastal Act and Master Response 5: Public Works Plan regarding consistency with the Coastal Act, Coastal Commission recommendations, and a summary of recent court decisions involving the Coastal Commission.

### 3.1.71 Comment Letter I57. Diane Ross-Leech

#### Comment I57-1

Thank you for the opportunity to review the Draft EIR (DEIR) for the Oceano Dunes State Vehicle Recreation Area (SVRA) and Pismo State Beach Habitat Conservation Plan (HCP). I am glad to see this DEIR and HCP proceeding towards completion and implementation. I have experience with developing and implementing complex, multi-species HCPs and they, for the most part, simplify operations tremendously and improve overall relations with the federal and state resource agencies.

Response to Comment I57-1

The commenter provides introductory remarks and comments broadly on habitat conservation plans. No specific comment is presented on the content of the HCP or the analysis in the EIR. No further response is required.

#### Comment I57-2

Vehicle/OHV Access Points: Oceano Dunes SVRA has a very complex regulatory environment with multiple federal, state and local jurisdictions that present potential overlap and conflicting direction. Recently, the CA Coastal Commission (as part of their oversight) has recommended changes to vehicle and OHV access points. If this request becomes a requirement, how will this affect HCP implementation?

Response to Comment I57-2

The comment regarding the complex regulatory environment at Oceano Dunes SVRA is noted. See Master Response 4: Consistency with Coastal Act regarding Coastal Commission concerns. Changes to SVRA access were previously evaluated by CDPR and are rejected from further consideration in EIR Volume 1 section 9.1.3. State Parks is not currently pursuing an alternate

access into the park. If an alternate access point is proposed in the future, State Parks would evaluate the impacts and determine if it would trigger an amendment to the HCP (e.g., if it would change the take numbers authorized in the ITP or modify the conservation program). See Master Response 14: Discussion of Alternatives for information on considered and rejected alternatives including changes to SVRA access routes.

**Comment I57-3**

CDF&W NCCP vs ITP: Oceano Dunes SVRA has in place a Biodiversity Management Plan that was co-developed with the CA Department of Fish and Wildlife (CDFW). The EIR states that a Natural Communities Conservation Plan is under development in order to obtain Incidental Take Permits (ITP) for state listed species. I understand how challenging this process can be and wonder why individual species specific ITPs won't suffice for take coverage.

Response to Comment I57-3

Of the animal species covered by the HCP, only CLTE is state listed and thus subject to the need for CESA take authorization. However, as a fully protected species, incidental take of CLTE can only be authorized under the Fish and Game code via an NCCP. See Master Response 10: California Fully Protected Species and NCCP for more information on the NCCP process.

**Comment I57-4**

AMMs: I believe I read that the HCP has about 580 Avoidance and Minimization Measures (AMMs)! Wow! I am curious what sort of overall compliance system will used to keep track of all the requirements and commitments for the HCP to make it "easy" for staff to successfully implement. And I know the HCP is not the only regulatory/compliance program that requires this rigor.

Response to Comment I57-4

The majority of AMMs are part of the ongoing conservation program in the HCP area. Almost all AMMs have previously been implemented, although some AMMs are new to address either CDPR proposed new activities (EIR Volume 1 section 2.4.2.2) or potential future activities (EIR Volume 1 section 2.4.2.3) Annual Reports would be submitted to the USFWS. The annual report will include management actions performed that year and results of the year's monitoring activities. See HCP Chapter 5 for more information.

**Comment I57-5**

Pismo Lake: I was surprised to read that Pismo Lake has no future development plan or access plan. Pismo Beach is a very popular state beach and I would hope that a plan to address this deficiency will be put forward in the near term.

Response to Comment I57-5

Pismo Lake is an unclassified area adjacent to Pismo State Beach. Pismo Lake is not officially closed to the general public, but public visitation is not encouraged because designated access points have not been established, and the area is treated as closed in the HCP. As noted in the comment, no management plan or future development design is currently in effect for the area.

**Comment I57-6**

Leased Lands and Future Land Acquisition: I understand that Oceano Dunes has many properties under lease from varying entities that are essential for the park. I also understand that there may

be additional properties in the future that could be additions to the park. How would the HCP address these future land additions?

Response to Comment I57-6

Any future land additions to the park would be evaluated to determine if land additions resulted in changed conditions for the covered species. If needed, CDPR would prepare an amendment to the HCP and submit an application to the USFWS for an amended ITP.

**Comment I57-7**

Camping and Day Use Levels: Over the last few years there have been changes to the capacity for Oceano Dunes day use and camping. Does the HCP have any impact or affect on day use or camping capacity?

Response to Comment I57-7

Day use and camping visitor use levels are established by CDP 4-82-300 as amended. CDPR has administratively reduced vehicle limits when warranted (e.g., see EIR Volume 1 Table 2-2. As discussed in EIR section 8.3.2, the proposed new actions would not increase visitor limits or the carrying capacity of the park.

**Comment I57-8**

Consultation Required for Exclosure Management: The HCP includes discussion about changes to the snowy plover exclosures, including increasing, decreasing and enhancing management. What consultation is required for these activities?

Response to Comment I57-8

Management of the nesting exclosures has been occurring in consultation with the Wildlife Agencies. The Southern Exclosure has been adaptively managed to provide nesting and chick rearing habitat for SNPL and CLTE and to accommodate seasonal public camping and OHV activity. Over the past 20 years, this area has been managed to increase vegetative cover in some years. CDPR has introduced surface material like wood chips and large woody debris and plant material to provide for suitable nesting habitat. At other times, vegetation has grown in the Southern Exclosure and has caused topographic changes that leave the area less suitable for SNPL and CLTE nesting. Through the adaptive management program, the Southern Exclosure may be managed to maintain primary habitat characteristics that support continued nesting and chick rearing.

Habitat manipulation in the Southern Exclosure is included in the HCP under CA-12b and is identified in the EIR as a potential future change to park operations and management (see EIR Volume 1 section 2.4.2.3). CDPR may consider habitat manipulation in the Southern Exclosure (CA-12b) at a larger scale (i.e., ≥5 acres) to reduce vegetation density focusing on invasive species and larger dune hummocks in areas where SNPL and CLTE nesting is reduced. This future activity may require a CDP from the Coastal Commission. The action would be covered by the federal ITP. The activity would occur outside of CLTE nesting season once CLTE are not on site and would thus not negatively affect CLTE. As a result, consultation with CDFW for impacts to state fully protected species would not be required.

**Comment I57-9**

Incidental Take Estimates: I was surprised by the high numbers requested for the HCP incidental take. All of the estimates were listed as “worse case.” As the HCP its implemented and a robust

compliance system in place, it may be useful to true up the incidental take numbers to show the success of the HCP program and the AMMs.

Response to Comment I57-9

The incidental take numbers presented in the HCP account for worst-case past observations of mortality and injury that have been observed only rarely during the timeframe from 2002 to 2023 and do not happen most years.

The estimated incidental take of SNPL and CLTE is summarized in HCP Tables 4-3 and 4-5, respectively, and discussed in detail in sections 4.3.2 and 4.42, respectively. Proposed new covered activities are not expected to substantially increase take levels beyond past levels. The natural resources management program has ensured stable or increasing SNPL and CLTE populations in the HCP area even with documented levels of ongoing take. Therefore, CDPR anticipates that SNPL and CLTE can sustain the requested levels of permitted take while maintaining stable or increasing populations in the HCP area. CDPR reports annually on SNPL and CLTE breeding season data as well as mortalities and take data, which can be compared to ITP take limits.

See Master Response 2: HCP Proposed Levels of Permitted Take for more information.

**Comment I57-10**

Implementation Costs vs Status Quo: I am interested in how the estimate for implementation costs compare to management costs today without the HCP. Does the HCP save money over time as staff get adjusted to the requirements and systems are in place to simplify compliance? Or does it cost more?!?

Response to Comment I57-10

The funding identified in HCP section 7.1 reflects current costs of implementing the conservation program adjusted for annual inflation. Please refer to Master Response 16: HCP Funding. The conservation program has been developed over two decades. The implementation costs reflect efficiencies of staff being familiar with the program requirements. CDPR has determined the HCP is the most effective approach to ensuring ongoing operations of the covered park units, including OHV recreation, in the context of compliance with regulatory obligations, including FESA.

**Comment I57-11**

Resources Needed to be Successful: Does the Oceano District have the support and resources needed to be successful, based on the detailed list?

Response to Comment I57-11

Funding levels needed to sustain the HCP are presented in HCP Chapter 7. This level of funding reflects the costs for CDPR to successfully implement its conservation program.

**Comment I57-12**

Environmentally Superior Alternative: I support the Environmentally Superior Alternative!

Response to Comment I57-12

The proposed comment expresses an opinion on the project. No specific comment is presented on the analysis in the EIR. See EIR Chapter 9 and Master Response 14: Discussion of Alternatives for information on alternatives considered in the EIR.

### 3.1.72 Comment Letter I58. Diane Ross-Leech (January 13, 2026, Public Comment Meeting)

#### Comment I58-1

Question is, I think it makes total sense, I've been involved with multi-species HCPs as well in the past, to cover new activities and future activities. I just was questioning how the US Fish and Wildlife Services was reacting to those, if they're on board with that, or if that has been controversial?

Response to Comment I58-1

CDPR cannot speak to USFWS comments on the HCP. CDPR and the USFWS have been engaged in a collaborative process to develop the HCP and work out important details. The USFWS will evaluate the HCP to determine if the conservation program meets ITP issuance criteria.

No specific comment is presented on the content of the HCP or the analysis in the EIR. See Master Response 1: HCP Purpose and ITP Issuance Requirements regarding requirements for the HCP.

### 3.1.73 Comment Letter I59. Madeline Schechter

#### Comment I59-1

As a resident of the Central Coast, I find the DEIR and HCP inadequate, and they insufficiently address the environmental impacts of the Oceano Dunes State Vehicular Recreation Area. The DEIR and HCP fail to protect threatened species and mitigate impacts to public and environmental health. They clearly prioritize vehicle recreation instead of habitat conservation, not meeting the requirements of an HCP.

Response to Comment I59-1

See response to comment I2-1 above.

#### Comment I59-2

Please change the Draft EIR and HCP to include: Comprehensive analysis and consideration of the no-vehicle alternative; Decrease the allotted take of the Western Snowy Plover and ESA-listed species; Increasing the duration and number of protection measures, and return to year-round exclosures protecting the plover and California least tern. Include analysis of the environmental impacts of foreseeable potential future projects, including a southern entrance to the ODSVRA and development around Oso Flaco Lake.

Response to Comment I59-2

See response to comment I2-2 above.

#### Comment I59-3

This matters to me because in my free time I spend a lot of time visiting Oso Flaco Lake and the Oceano Dunes to look for birds and hike. I also love to run on the beach and kayak/paddleboard

in the ocean. The health of the ocean and our coastline directly affects my activities. When I was attending Cal Poly I was an intern for the Guadalupe Dunes Center, and I saw firsthand the devastation caused by vehicles on the dunes and beach. I love our coast and all the fun activities that come with it. I love all the birds and other wildlife that call these dunes home. I do not feel safe walking/running on the beach with vehicles driving on it. Please keep our beach safe and clean!

Response to Comment I59-3

See response to comment I2-3 above.

### 3.1.74 Comment Letter I60. Peggy Sharpe

#### Comment I60-1

Protect Oceano Dunes from vehicles. They contaminate local air quality, and I am concerned about environmental and public health. Also-- we need to protect wildlife, e.g. western Snowy Plover. Thanks for your consideration in this important matter!

Response to Comment I60-1

The proposed comment expresses opinion on the project. No specific comment is presented on the analysis in the EIR.

Motorized recreation (CA-1) is an authorized ongoing activity in the HCP and is not analyzed in the EIR as a proposed new visitor use or project activity. Impacts of existing activities are discussed HCP Chapter 4 and EIR Appendix D. See General Response 6: CEQA Baseline and Scope. Also see Master Response 14: Discussion of Alternatives regarding consideration of a No Vehicle Alternative.

CDPR has a mandate to balance the need to protect California's natural resources, while providing recreational access to the parks. See Master Response 3: HCP with CDPR Mission and Mandates for more information.

### 3.1.75 Comment Letter I61. Laurel Sherrie

#### Comment I61-1

I support this statement: The Center for Biological Diversity celebrated the ruling. "The court's ruling sends a strong message that California must finally safeguard the federally protected birds it has for so long ignored," Center for Biological Diversity senior conservation advocate Jeff Miller said in a statement. "For decades, state officials have let off-road vehicles tear through endangered species habitat at Oceano Dunes, injuring and killing snowy plovers, harassing roosting flocks and degrading their habitat. This decision makes it clear that such neglect can no longer continue." Please safeguard these protected birds and their environment.

Response to Comment I61-1

The comment expresses opinion on the project. No specific comment is presented on the analysis in the EIR.

See response to CBD comment O4-17 above. Also see Master Response 3: HCP with CDPR Mission and Mandates, and Master Response 6: CEQA Baseline and Scope.

### 3.1.76 Comment Letter I62. Sherry (full name unknown)

#### Comment I62-1

Please don't let homes, etc on this wild land. The wild animals need this land.

Response to Comment I62-1

The HCP does not propose to build homes in the HCP area. No specific comment is presented on the content of the HCP or the analysis in the EIR. No further response is required.

### 3.1.77 Response to Comments from John Sherwood

#### Comment I63-1

No amount of death or harassment of endangered species is acceptable. The Snowy Plover should be protected to maximum extent. There is no excuse for recreational off road vehicles on these fragile coastal dunes.

Response to Comment I63-1

The proposed comment expresses an opinion on the project. No specific comment is presented on the analysis in the EIR.

Motorized recreation (CA-1) is an authorized ongoing activity in the HCP and is not analyzed in the EIR as a proposed new visitor use or project activity. Impacts of existing activities are discussed HCP Chapter 4 and EIR Appendix D. See General Response 6: CEQA Baseline and Scope. Also see Master Response 14: Discussion of Alternatives regarding consideration of a No Vehicle Alternative.

CDPR has a mandate to balance the need to protect California's natural resources, while providing recreational access to the parks. See Master Response 3: HCP with CDPR Mission and Mandates for more information.

### 3.1.78 Comment Letter I64. Carolyn Silas

#### Comment I64-1

I am a local and have lived in Pismo Beach for 23+ years. I hope you will support the Endangered Species Act and STOP allowing vehicles to be on the Dunes in Oceano. If you can find a way to collaborate for the health and safety of the bird species, but, if not, CLOSE IT, please!!!!

Response to Comment I64-1

The proposed comment expresses an opinion on the project. No specific comment is presented on the content of the HCP or the analysis in the EIR.

Motorized recreation (CA-1) is an authorized ongoing activity in the HCP and is not analyzed in the EIR as a proposed new visitor use or project activity. Impacts of existing activities are discussed HCP Chapter 4 and EIR Appendix D. See General Response 6: CEQA Baseline and Scope. Also see Master Response 14: Discussion of Alternatives regarding consideration of a No Vehicle Alternative.

CDPR has a mandate to balance the need to protect California's natural resources, while providing recreational access to the parks. See Master Response 3: HCP with CDPR Mission and Mandates for more information.

### 3.1.79 Comment Letter I65. Julie and Ray Smith

#### Comment I65-1

No oil drilling off the coast of California!

Response to Comment I65-1

The project does not include oil drilling. No further response is required.

### 3.1.80 Comment Letter I66. Kerry Stiles

#### Comment I66-1

As an 87-year-old veteran, my family and I have, over the years, visited Pismo Beach for weekend enjoyment and driven out on the Oceana Dunes. Those visits are wonderful memories for me and our children, who are now older. My wife passed away in 2016, but we used to talk about going back for more visits. Please protect the wonderful area.

Response to Comment I66-1

The proposed comment expresses opinion on the project. No specific comment is presented on the content of the HCP or analysis in the EIR. No further response is required.

### 3.1.81 Comment Letter I67. Anestesia Telecetsy

#### Comment I67-1

As a resident of Los Osos, California who is proud of the beauty of the central coast, I am concerned that the DEIR and Habitat Conservation Plan fail to have a vision that protects the ocean coast for non-vehicular recreation. I know the argument is that cars have to have somewhere to drive on the beach. Do they? California is committed to 30x30. We should protect habitat conservation. Oceano beach is any easy place to protect. It is good for central coast and good for California.

Response to Comment I67-1

The comment makes a broad assertion regarding inadequate protection of coastal habitat but does not provide any substantial evidence for CDPR consideration of how the EIR analysis of impacts to coastal resources is inadequate.

Pismo State Beach and Oceano Dunes SVRA park units provide both motorized and non-motorized recreation opportunities. Large areas of the HCP area are designated for pedestrian use only with motorized use prohibited (e.g., Pismo State Beach north of Grand Avenue, Pismo Dunes Natural Preserve, and Oso Flaco Lake area). See Master Response 3: HCP with CDPR Mission and Mandates for more information.

Motorized recreation (CA-1) is an authorized ongoing activity in the HCP and is not analyzed in the EIR as a proposed new visitor use or project activity. Impacts of existing activities are discussed HCP Chapter 4 and EIR Appendix D. See General Response 6: CEQA Baseline and Scope. Also see Master Response 14: Discussion of Alternatives regarding consideration of a No Vehicle Alternative and Night Closure Alternative.

### 3.1.82 Comment Letter I68. Rachel Toti

#### Comment I68-1

An Incidental Take Permit (ITP) should not be issued for ongoing activities in the Oceano Dunes District. This revised version does nothing to protect the California Least Tern and Western Snowy Plovers. In fact, it reduces the nesting area by 1/3.

More should be done to "benefit covered species, minimizing human alteration or disturbance of native habitats, reducing conflicts between covered species and park users, restoring native habitats, and monitoring the success of these efforts." Specifically, the number of vehicles allowed in the park should be reduced significantly; night riding should be stopped as it disturbs the nesting Terns and Plovers; all exclosures including the Foredune Project area should remain year around protection.

Response to Comment I68-1

The comment expresses opinion on the project. No specific comment is presented on the content of the HCP or the analysis in the EIR.

EIR Volume 1 section 6.3.2.1 and 6.3.2.2 evaluated the impact of reducing protected nesting habitat on SNPL and CLTE from the proposed reduction of Boneyard and 6 Exclosures (CA-50). The impact analysis determines that with the implementation of avoidance and minimization measures (AMMs) identified in EIR Appendix B, the reduction of the Boneyard Exclosure and 6 Exclosure is expected to have a less-than-significant impact on SNPL and CLTE by minimizing mortality and disturbance-related impacts and by continuing to support a viable population of breeding SNPL and CLTE. SNPL AMMs 1 through 46 and CLTE AMMs 1 through 37 address OHV recreation impacts to SNPL and CLTE. Please refer to Master Response 1: HCP Purpose and ITP Issuance Requirements for additional discussion of species recovery and the use of ITPs and Master Response 7: Reduction of Boneyard and 6 Exclosures (CA-50) for additional discussion about the exclosure.

EIR Volume 1 section 9.2.4 evaluated a reduction in the number of vehicles allowed in the park as a project alternative as Alternative 4: Reduced Vehicle Use Limits. CDPR considered and rejected this alternative in favor of the proposed HCP or the reasons presented in EIR section 9.2.4.3.

Night riding in the park is an existing activity. The impacts of night riding are effects of the existing park operation (baseline conditions) and not a new effect of the HCP. The HCP does not propose changes to existing recreation activities and would not introduce any changes from baseline environmental conditions. EIR Volume 1 section 9.1.4 discusses the considered and rejected alternatives, which includes restricting riding times and night riding closure.

The 48-acre foredune area was permanently closed to OHV use and planted with vegetation for dust control purposes under separate state agency action implementing the Dust Control Program. See Master Response 8: Dust Control Program (CA-44) for more information.

#### Comment I68-2

Pg. 4-47 of the draft Habitat Conservation Plan states regarding vehicle strikes and reduction of the nesting area "As a result, more SNPL will be vulnerable to vehicle strike due to the presence of vehicles on the shoreline. Chicks will be most vulnerable since they will be unable to fly out of harm's way. This could be exacerbated in conjunction with the Southern Exclosure reduction (section 2.2.5.11), which is predicted to result in some adult aggression/density issues and push

additional chicks and adults out of the protection of the exclosure into the open riding area. “This is not the way to protect a threatened species.

Response to Comment I68-2

The proposed comment expresses opinion on the project. No specific comment is presented on the content of the HCP or the analysis in the EIR. See response to comment I68-1 above, Master Response 1: HCP Purpose and ITP Issuance Requirements, and Master Response 7: Reduction of Boneyard and 6 Exclosures (CA-50) for additional discussion of the exclosure reduction.

**Comment I68-3**

Pg. 4-50 Describes the elimination of 1/3 of the WSP nesting area. “Eliminating the East Boneyard Exclosure (approximately 47 acres) and incremental elimination of 6 Exclosure (62 acres) 50 could result in the loss of up to 109 acres of protected SNPL breeding habitat. This reduction represents approximately one-third of the 368 acres of SNPL breeding habitat currently protected by the Exclosures (300 acres in the Southern Exclosure and 68 acres in North Oso Flaco Exclosure).

Response to Comment I68-3

The comment expresses opinion on the project. No specific comment is presented on the content of the HCP or the analysis in the EIR. See response to comment I68-1 above and Master Response 7: Reduction of Boneyard and 6 Exclosures (CA-50) for additional discussion of the exclosure reduction.

**Comment I68-4**

The HCP notes, “Historical nest data indicates that between 25 and 97 nests have been established annually in the 6 Exclosure between 2005 and 2023; therefore, if the entire 6 Exclosure is removed, it could result in 75 to 291 chicks moving into the open riding area to forage where they are at risk of being struck by a vehicle.” Pg. 4-52. This is unacceptable, and NO reduction in the 6 Exclosure should be approved.

Response to Comment I68-4

The proposed comment expresses opinion on the project. No specific comment is presented the content of the HCP or on the analysis in the EIR. See response to comment I68-1 above and Master Response 7: Reduction of Boneyard and 6 Exclosures (CA-50) for additional discussion of the exclosure reduction.

### 3.1.83 Comment Letter I69. Donna Turner

**Comment I69-1**

I writing today about an issue that is negatively affecting my quality of life. Since Jan. of 2025, riding on the dunes has been allowed 24 hours a day, every day, with no restrictions. Prior to this change, riding was allowed only until one hour after sunset.

Response to Comment I69-1

Nighttime riding is an existing park operation and therefore is part of the baseline for CEQA purposes. CDPR proposed new activities do not create substantially changed nighttime riding patterns or introduce new impacts from nighttime riding. See Master Response 6: CEQA Baseline and Scope for more information. Also see response to CDFW comment A2-2 above.

**Comment I69-2**

I often hear the drone and revving of engines all day long, only to have the noise continue into the night. This means disrupted sleep, stress, and diminished quality of life. The sound studies that CA State Parks rely upon to determine what constitutes a noise violation does not capture what is actually being heard from bedroom windows in my neighborhood. Wind, weather, and the way sound travels across sand and open land all affect the level of sound I, and my neighbors, experience. The current methods used in sound monitoring are flawed and simply do not reflect the reality. If they did, I would not feel compelled to bring this attention to members of the Board of Supervisors. While I understand and respect that off-road recreation is part of California's beach culture, I would like to point out that no other recreational or transportation activity operates 24 hours a day without limits. Airports, concert venues, campgrounds, sports facilities, etc. all have curfews and quiet hours. Most importantly, every other California state park has quiet hours from 10pm to 6am, These established "quiet hours" are designed to ensure peace and restful nights for campers. Certainly, it is not unreasonable to expect that this courtesy be extended to those living in nearby areas.

Response to Comment I69-2

The comment remarks on the effects of nighttime noise associated with OHV activity on nearby residents and camp users. The impacts of night riding are effects of the existing park operation (baseline conditions) and not a new effect of the HCP. The HCP does not propose changes to existing recreation activities, and would not introduce any changes from baseline environmental conditions. See Master Response 6: CEQA Baseline and Scope for more information.

Section 9.1.4 of the EIR discusses the considered and rejected alternative regarding restricting riding times and night riding closure. See Master Response 14: Discussion of Alternatives for more information.

**Comment I69-3**

I'm not asking to eliminate off-road riding — only that we bring its hours into alignment with other recreational uses. Our coastal management plan should serve all members of our coastal communities — not just those who ride on the dunes with motorized vehicles. There are many who would enjoy the quiet of a beach walk at sunset but under the current conditions, that is not possible. I ask that the California Coastal Commission consider a change to the operating hours at the Oceano SVRA. There are plenty of daytime hours for locals and visitors to enjoy riding on the dunes. The residents of neighborhoods in our coastal communities deserve to have peace and quiet during the evening and nighttime hours. These changes would be a fair and balanced remedy to this situation. Thank you for considering a reasonable limit that supports both recreation and rest.

Response to Comment I69-3

The commenter describes a noise complaint and recommends limiting the hours of operation for the park. The HCP does not propose a change to the hours of operation, and the commenter does not include specific comments about the content of the HCP or the analysis in the EIR. No further response is required.

### 3.1.84 Comment Letter I70. Charles Varni

#### Comment I70-1

HCP

The proposed Habitat Conservation Plan (HCP) for the Oceano Dunes – drafted by the California Department of Parks and Recreation (CDPR) to bring it into compliance with the Endangered Species Act by reducing the damage done to endangered species by off-highway vehicles (OHVs) has multiple problems, but they all come down to one: The persistent belief that the conservation plan mandated by the Endangered Species Act must "balance" the need to keep species from going extinct with the need to cater to the recreational preference of a particular interest group.

Response to Comment I70-1

The HCP represents CDPR's application for an ITP. HCP objectives and covered activities are the discretion of the permit applicant.

See Master Response 3: HCP with CDPR Mission and Mandates regarding accommodating recreation and conservation.

#### Comment I70-2

1. Endangered or threatened species

—This document totally ignores steelhead trout which live and spawn in Arroyo Grande creek.

—There is no discussion of the massive disappearance of razor clams from the intertidal zone. Much more vulnerable than Pismo clams to mortality from 8,000 lb vehicles compressing them while in shallow burrows, razor clams have significantly declined in the last ten years. This species was raised as a concern in 1982 when the original CDP was granted. Why is there no analysis of them?

—At lower tides huge beds of Pismo clams are exposed to vehicular traffic and State Parks does nothing to protect them from being crushed by vehicles weighing multiple tons

—-The request for increased "take" of Plovers and Terns is basically a "license to kill" endangered species.

The bottom line fact is that the SVRA is incompatible with the protection of ESHA and endangered species.

Response to Comment I70-2

Steelhead trout is not a species covered by the HCP. See Master Response 6: CEQA Baseline and Scope. Pismo and razor clams are not federally listed species and would not be subject to FESA.

The effect of existing recreational activities on the environment is considered baseline conditions and is not subject to environmental review in this EIR. Biological effects from existing park activities are discussed in EIR Appendix D. CDPR is not proposing any new covered activities that would affect Arroyo Grande Creek or the intertidal zone. As such, the proposed new project activities would not impact steelhead, Pismo clams, or razor clams. Any impacts to these species from current activities are baseline conditions. See Master Response 6: CEQA Baseline and Scope.

See Master Response 1: HCP Purpose and ITP Issuance Requirements and Master Response 2: HCP Proposed Level of Permitted Take for information on the take requested in the HCP.

The EIR analyzes project impacts on ESHA and has determined the impacts would be less than significant. See Master Response 4: Consistency with Coastal Act for information regarding ESHA impacts.

**Comment I70-3**

HCP EIR 8.3.1

In addition, the EIR has determined the project would have a significant environmental impact related to recreation and public access in the project area if it would substantially limit, reduce, or interfere with established coastal recreational opportunities or public access. One of these things is not like the others. The real categories of projects that might have significant environmental impacts have nothing to do with any of the proposed measures to reduce the harms done to endangered species by motorized vehicles in the Oceano Dunes. But the CEQA guidelines state that the Threshold of Significance checklist "may be tailored to satisfy individual agencies' needs and project circumstances." Given an inch, State Parks has taken a mile, carving a loophole in this provision and driving a 40-foot toy hauler through it. Thus do actions involving "recreational facilities which might have an adverse effect on the environment" morph into a vague "environmental impact related to recreation," and the law protecting the environment somehow becomes a law protecting environmentally destructive activities.

Response to Comment I70-3

See Master Response 15: Recreation Impact Significance Threshold.

**Comment I70-4**

Additionally, the EIR ignores the environmental, economic, and social injustice foisted on the community of Oceano by turning its beach into a road for motor vehicles. This has basically driven other types of pedestrian or aquatic recreation away from our beach and resulted in economic repression. Compared to neighboring beach cities like Pismo and Avila, Oceano has become a "sacrifice zone" for State Parks and the ODSVRA. Indeed, as the CCC staff has stated, "Oceano is the poster child for environmental justice on the California coast." Oceano deserves a vehicle free beach, even if the ODSVRA continues as such.

Response to Comment I70-4

Pismo State Beach and Oceano Dunes SVRA park units provide both motorized and non-motorized recreation opportunities. Large areas of the HCP area are designated for pedestrian use only with motorized use prohibited (e.g., Pismo State Beach north of Grand Avenue, Pismo Dunes Natural Preserve, and Oso Flaco Lake area). See Master Response 3: HCP with CDPR Mission and Mandates for more information.

A No OHV Alternative eliminating OHV use in the park was not considered in the EIR or HCP as a project alternative since the park is a SVRA established by the state legislature for the explicit purpose of providing an area for motorized recreation. See Master Response 14: Discussion of Alternatives for more information.

### 3.1.85 Comment Letter I71. Karen Venditti

#### Comment I71-1

I urge the Coastal Commission of reject the State Parks' proposed HCP, which provides the basis for U.S. Fish and Wildlife Service (USFWS) issuance of a 25-year permit authorizing incidental take of listed species under FESA. In addition, I urge you to reject CDPR's efforts to take authorization from the California Department of Fish and Wildlife (CDFW) for species listed under the California Endangered Species Act (CESA). The Central Coast, its people, its economy, and its future depends on protecting Oceano Dunes from off-road recreation.

Response to Comment I71-1

The comment expresses opinion on take authorization by the USFWS and CDFW. No specific comment is presented on the content of the HCP or analysis in the EIR. See Master Response 1: HCP Purpose and ITP Issuance Requirements and Master Response 10: California Fully Protected Species and NCCP for more information on take authorization by the USFWS and CDFW, respectively.

### 3.1.86 Comment Letter I72. Chris Victorino

#### Comment I72-1

The beach was used for off road recreation for 100 yrs. Unrestricted. The plovers are still there. Now the area for off road use is a small % of what it once was. The plovers are flourishing. The recreation dollars are a benefit to the local economy. What ALL govt agencies need to do is stand down and leave it the hell alone, or take another beating in court and go to prison for fraud and harassment of we the people that live here. Just drop it. Now.

Response to Comment I72-1

The HCP does not propose any new projects that would adversely impact access to coastal recreation. New covered activities would benefit recreation access by developing new or improving existing facilities (i.e., reduction in seasonal exclosures [CA-50], limited trail riding [CA-42]), see HCP sections 2.2.5.3 and 2.2.5.11 and EIR Chapter 2 for more information. CA-50 and CA-42 (if implemented) are expected to result in a net gain in OHV recreation access compared to existing conditions.

CDPR has a mandate to balance the need to protect California's natural resources, while providing recreational access to the parks. See Master Response 3: HCP with CDPR Mission and Mandates for more information.

### 3.1.87 Comment Letter I73. Mike Webster

#### Comment I73-1

I am STRONGLY opposed to ATV and off-road vehicle use in the Oceano Dunes. It's been fantastic that the past few years have been ATV free in the dunes. I am a very frequent user (hiking, birdwatching, running, picnicking) of Oso Flaco State Park, Guadalupe-Nipomo Dunes, and Pismo Beach (including the golf course). I've hiked the full stretch of this coast many times, in many seasons. I've noticed a significant improvement in the quality of my visits and uses of these state resources since the ATV ban went into affect.

Including a substantial increase in the presence and health of snowy plovers. The dunes are a special place, with historical resources, natural resources and habitat, and an important natural

space for the central coast and all of California. Use of ATVs in the dunes is a travesty, and inconsistent with the importance of the dune complex (which stretches from Pismo all the way to Mussel Point). I have directly witnessed from multiple locations and directions, the substantial noise pollution caused by the ATVs. Oceano Dunes are no place for this type of noise. I have directly witnessed from multiple locations and directions, the substantial erosion and damage to vegetation caused by ATVs travelling into all types of dune settings along this stretch of the coast. Including sections of the dunes that are supposed to be off limits. I have directly witnessed from multiple locations and directions the clouds of fine particulates and exhaust that gets blown downwind of the dunes from ATV activities. Under certain conditions, the ""clouds"" of particulates and fine sand are clearly visible wafting over multiple parts of Nipomo and the mesa. The fragile and ecologically significant area that encompasses Oceano Dunes is no place for ATV use. There are plenty of other more ""compatible"" uses for the public to enjoy these dunes.

Response to Comment I73-1

Motorized recreation (CA-1) is an authorized ongoing activity in the HCP and is not analyzed in the EIR as a proposed new visitor use or project activity. Impacts of existing activities are discussed HCP Chapter 4 and EIR Appendix D. See Master Response 6: CEQA Baseline and Scope for more information. The HCP area has been fully reopened to recreational use since the Covid-19 closure.

Pismo State Beach and Oceano Dunes SVRA park units provide both motorized and non-motorized recreation opportunities. Large areas of the HCP area are designated for pedestrian use only with motorized use prohibited (e.g., Pismo State Beach north of Grand Avenue, Pismo Dunes Natural Preserve, and Oso Flaco Lake area). See Master Response 3: HCP with CDPR Mission and Mandates for more information.

Air quality in the Oceano Dunes SVRA is addressed by the Dust Control Program, which is a covered activity in the HCP (CA-44), but is an ongoing adaptive management program independent of the HCP. The EIR air quality analysis incorporates and considers recent scientific information related to the nature and source of dust generation at and in the vicinity of Oceano Dunes SVRA. See Master Response 8: Dust Control Program (CA-44) for more information.

### 3.1.88 Comment Letter I74. Kelly Wheeler

#### Comment I74-1

I'm dumbfounded. The Endangered Species Act is just for Endangered Species not Threatened! Since the snowy plover population grew with existing off-road use, there should be no complaint. Yes some died, but how many exactly? If you say even one is too much then you don't live in reality because 40,000 people die each year due to Alcohol drivers, and it's not those drunk drivers dying just their victims, yet it is continued to be allowed! The plovers are nesting IN the tracks, so where will they nest if off-roading is stopped? You want take away their natural habitat?! Natural selection will handle things, if they are bothered they'll move to somewhere they aren't! Or are you suggesting that there's no sand anywhere else!? Someone is trying to justify their job, bored, or just trying to make a name for themselves! That's so wrong!

Response to Comment I74-1

The HCP does not propose any new projects that would adversely impact access to coastal recreation. New covered activities would benefit recreation access by developing new or improving existing facilities (i.e., reduction in seasonal exclosures [CA-50], limited trail riding

[CA-42]), see HCP sections 2.2.5.3 and 2.2.5.11 and EIR Chapter 2 for more information. CA-50 and CA-42 (if implemented) are expected to result in a net gain in OHV recreation access compared to existing conditions.

CDPR has a mandate to balance the need to protect California's natural resources, while providing recreational access to the parks. See Master Response 3: HCP with CDPR Mission and Mandates for more information.

### 3.1.89 Comment Letter I75. Darryl Williams

#### Comment I75-1

Birds and wildlife are facing ever shrinking habitat everywhere. We've reached a point where we are starting to see extinctions at an accelerated pace. While recreation is indeed good for us, its importance pales in comparison to protecting our disappearing wildlife. Especially since we have other options and animals do not.

Response to Comment I75-1

The comment expresses opinion on recreation at Oceano Dunes. No specific comment is presented on the content of the HCP or analysis in the EIR.

See Master Response 3: HCP with CDPR Mission and Mandates and Master Response 6: CEQA Baseline and Scope for more information.

### 3.1.90 Comment Letter I76. Bill Woodbridge

#### Comment I76-1

I am very opposed to the vast expanse of "dunes" beach/park area (5005 acres) that would allow "incidental take permits" for endangered species. That is WAY TOO BIG OF AN AREA to expose endangered species to death and disruption. I propose that you either cute the size of the area down to a maximum of 2000 acres (in the least sensitive areas), construct fencing to keep vehicles out of the sensitive areas, limit the number of vehicles using the area per day, or disallow the use of vehicles in the area at all. These vehicle owners can find other much less sensitive areas at which to operate their vehicles.

Response to Comment I76-1

The area open to OHV recreation is 1,138 acres out of the 5,005-acre HCP area (see HCP Table 2-1). Seasonal fencing is erected during the SNPL and CLTE breeding season (see HCP section 2.2.2.1.1). Amendment A5 of CDP 4-82-300, which was approved in 2001, established the following daily limits on vehicles within Oceano Dunes SVRA: up to 2,580 street-legal vehicles, 1,000 street-legal vehicles for camping,14 and 1,720 OHVs (see HCP section 2.2.1.1). See Master Response 14: Discussion of Alternatives regarding consideration of a No OHV Alternative.

The comment does not present new substantial evidence for CDPR consideration or change the analysis contained in the EIR.

### 3.1.91 Comment Letter I77. Peter Zajac

#### Comment I77-1

The natural setting of the dunes must be protected. The birds are a small part of it but they are the critical issue. The dune buggy effort is strong and united. State parks are paid by our taxes

and they must be held accountable. I am retired State empi of 30 years effort and never hv I violated my agency laws.

Response to Comment I77-1

The comment does not present new substantial evidence for CDPR to consider or identify specific deficiencies in the EIR analysis. The HCP presents a comprehensive conservation program and the EIR analysis has determined the impacts on special-status species would be less than significant.

See Master Response 1: HCP Purpose and ITP Issuance Requirements and Master Response 3: HCP with CDPR Mission and Mandates.

### 3.1.92 Comment Letter I78 Anonymous

#### Comment I78-1

The draft EIR states in Paragraph 5.5 Mitigation Measures:

"Impact AIR-1: The proposed reduction of the East Boneyard Exclosure and 6 Exclosure (CA50) could potentially change dune surface emissivity, increase dust generation, expose persons to substantial pollutant concentrations that lead to exceedances of PM2.5 and/or PM10 ambient air quality standards."

In addition to harming the endangered birds by eliminating their nesting areas, the EIR acknowledges it would increase the PM10 and PM2.5 the public is exposed to. Public records of the APCD Hearing Board meetings document findings reported by the Desert Research Institute, that the continued disturbance of the Oceano Dunes surface by OHV activities is a contributor to increased particulates being released from the dunes. We oppose the opening of the East Boneyard and 6 Exclosure to OHV and other activities. In addition, both of these areas are located in the Southern-most portion of the park in close proximity to heavily populated housing areas and the city of Guadalupe. The likelihood of an increase in blowing particulate pollution is very high and will affect the residents.

Why then does the EIR propose to increase OHV activity in the Exclosure areas, which will add another 109 acres to riding, knowing what this will do to air quality?

Response to Comment I78-1

As described in EIR Volume 1 section 5.2.4, the dust control measures installed in the Oceano Dunes SVRA, which are described in more detail in the ARWP documents, are designed to address PM emissions under the excess emissions framework as per the requirements of the SOA as amended. The mitigation measure AIR-1 (EIR Volume 1 section 5.5) states that any violations of air quality standards or changes in dune surface emissivity associated with implementation of the HCP would be adequately addressed and accounted for in the ARWP process to achieve and maintain compliance with the requirements of the SOA. The HCP includes dust control activities as a covered activity (CA-44), but dust control activities are not proposed or under review as part of the HCP. See Master Response 7: Reduction of Boneyard and 6 Exclosures (CA-50) and Master Response 8: Dust Control Program (CA-44) for more information.

#### Comment I78-2

Paragraph 5.5 of the EIR acknowledges the ongoing requirement for compliance with the Stipulated Order of Abatement, SOA 17-01. Both State Parks and the APCD are claiming a 40% reduction in particulate matter as a result of their efforts. However as we have repeatedly pointed

out in public comments, this claimed reduction relies on the original SOA particulate matter measurement metric, that averages air quality readings over each 24 hour period. That metric, as acknowledged by the SAG, conceals midday exceedances that often occur between the hours of 1:00 to 5:00 pm on days experiencing high wind events.

Last year the SAG made a new metric available which samples air quality daily between the hours of 9:00 am to 6:00 pm. Use of this new metric will provide a more accurate measure of exceedances. If the new data shows an increase in exceedances, which we suspect it will, the EIR proposes to "control dust from another portion of the HCP area to achieve compliance with the SOA". Sounds good on paper but we are talking about human health impacts here."

Response to Comment I78-2

The comment remarks on the excess emissions results presented in the EIR, which are described in further detail in the ARWP documents, and notes a discussion of a potential new metric developed by the SAG. The SOA was amended on October 16, 2025, to include continued refinement, and reporting the results annually to the Hearing Board, of the SAG measurement-based metric (i.e., SAG metric). However, the SAG metric is not currently used to determine compliance with the SOA, as amended October 16, 2025. Please refer to Master Response 8: Dust Control Program (CA-44) for additional information on the Dust Control Program and SOA compliance status as of October 2025.

**Comment I78-3**

Please reconsider the proposed plan to open more acreage to OHV activities at the expense of the endangered birds as well as humans who live downwind of the Oceano Dunes.

Response to Comment I78-3

See Master Response 7: Reduction of Boneyard and 6 Exclosures (CA-50) regarding the rationale, criteria, and impacts of reduction of exclosures. Also see response to comment I78-1 above regarding potential air quality impacts from reduction of exclosures.

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# CHAPTER 4 COMMENT LETTERS

# T1 Northern Chumash Tribal Council

Mr. Ronnie Glick
Senior Environmental Scientist
Oceano Dunes District
California Department Parks and Recreation
340 James Way, Ste. 270
Pismo Beach, CA 93449

January 23, 2026

[Sent via email to comment@oceanoduneshcp.com]

Dear Mr. Glick,

The Northern Chumash Tribal Council writes to share our concerns regarding the recirculated draft EIR and draft HCP for snowy plovers and least terns within the Oceano Dunes area. We object to the HCP and draft EIR in their current forms. **T1-1**

The Oceano Dunes are a sacred Chumash cathedral of life, and the area holds deep significance to the Northern Chumash Tribal Council. Chumash ancestors have historically been the stewards and guardians of this special area containing historic resources and the cultural heritage of our elders for preservation for our children and grandchildren. The Dunes sustain ecologically important species and support critical habitat. This abundance of resources accounts for the richness and cultural complexity of the Chumash Heritage. Given this critical importance, any plan for the area must include the highest possible level of protection to the broadest range of wildlife, habitats, communities, and cultural resources. **T1-2**

We believe that the ocean is Grandmother Ocean, the earth is Mother Earth, and all inhabitants are our Relatives. We are guided by a deep obligation to take care of all Relatives. Natural resource protection is in harmony with our Chumash history of nurturing health and balance with all things. As stewards of the ocean and land, Chumash have been guardians of this region for many thousands of years. In the words of our former chair, Mr. Fred Collins, "[t]he Northern Chumash Tribal Council (NCTC) has spoken to the preservation of the Dunes for over 50 years, asking and pleading for actions that stop the destruction of the Chumash Culture, and Sacred Sites. To no avail. What we have got are: fences around visible Chumash Sites, fences that out-of-towners drive over, thinking it is funny to destroy Chumash Sacred Sites, trucks with 'Proud Boys' flags driving over our Sacred Sites with no care for the importance of Chumash Culture." **T1-3**

The draft HCP and accompanying EIR fail to reckon with the cultural importance of this site, even as it underscores that the HCP area is "located within the Northern Chumash . . . territory" (page 7-8) and concedes that the area "has a high degree of sensitivity in terms of cultural and tribal cultural resources" (page 7-10). **T1-4**

Furthermore, the recirculated draft EIR and HCP do not adequately protect the ecological significance of the area. T1-5

In 2020, the dunes were vehicle-free. During that time, ecological conditions on the dunes noticeably improved. The beach returned to its natural contours from tidal zones to foredunes. Wildlife presence expanding along the beach. Birds, like the black headed heron, were seen in greater numbers. Ospreys were seen at Arroyo Creek. Coyotes were seen during daylight. Hundreds of small clams were seen in the intertidal zone. Once vehicles were allowed back, the beach's contours were flattened and the wildlife fled or disappeared. T1-6

We respectfully request that the agency amend the EIR to grapple with the irreplaceable resources in this area, including by:

- Implementing readily feasible mitigation measures to preserve species and artifacts, such as by expanding exclosures and limiting OHV operations, rather than dismissing those options as unnecessary based on a flawed assessment of the environmental impacts of this decision and its significance;
- Addressing reasonably foreseeable impacts associated with OHV use, which the HCP would continue to permit, and thus would enable to cause environmentally significant effects;
- Reckoning with potential significant environmental impacts for those activities that fall outside of its own jurisdiction (as in, any activities it deems attributable to the County of San Luis Obispo), as required by California appellate caselaw;
- Engaging in a more fulsome consultation with the tribes that have cultural resources at stake.

T1-7

Only by taking these measures can this unique site of important cultural significance be adequately protected.

Respectfully submitted,

The Northern Chumash Tribal Council

STATE OF CALIFORNIA — NATURAL RESOURCES AGENCY GAVIN NEWSOM, *GOVERNOR*

**CALIFORNIA COASTAL COMMISSION**
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**January 23, 2026**

Catherine Darst
United States Fish and Wildlife Service – Ventura Fish and Wildlife Office
2493 Portola Road, Suite B
Ventura, CA 93003

Ronnie Glick
California Department of Parks and Recreation – Oceano Dunes District
340 James Way, Suite 270
Pismo Beach, CA 93449

**Subject: California Department of Parks and Recreation and United States Fish and Wildlife Service Proposed Habitat Conservation Plan for Oceano Dunes (Federal Docket Number FWS-R8-ES-2025-0143)**

Dear Ms. Darst and Mr. Glick:

Thank you for the opportunity to review and comment on the proposed Habitat Conservation Plan (HCP) and its associated environmental documents (the Recirculated Draft Environmental Impact Report and Draft Environmental Assessment). The HCP and its associated documents address the management and protection of multiple species covered by the state and federal Endangered Species Acts (CESA and FESA), all within the California Department of Parks and Recreation's (State Parks) 5,005-acre Oceano Dunes District program area, which is comprised of Pismo State Beach, the Oceano Dunes State Vehicular Recreation Area, and a series of other adjacent properties used by State Parks for parks purposes. It is our understanding that the proposed HCP, once finalized, would be the basis for the United States Fish and Wildlife Service (USFWS) to issue an Incidental Take Permit (ITP) to State Parks under FESA.

We have previously provided extensive comments on the last draft of the HCP from 2020, where we voiced our appreciation for State Parks' efforts to obtain proper FESA coverage, but also identified several concerns, including that the proposed HCP allowed for significant take of sensitive coastal species and harm to their habitats. We also noted that the proposed HCP provisions do not conform with the California Coastal Act, the San Luis Obispo County and City of Grover Beach Local Coastal Programs, and Coastal Commission coastal development permit (CDP) 4-82-300 as amended, all of which govern State Parks activities at Oceano Dunes under state law. While we acknowledge and appreciate that the currently proposed HCP incorporates additional

A1-1

data to inform take estimates and management objectives for species,[1] the HCP overall remains essentially unchanged from 2020. Thus, we continue to have the concerns raised in our previous letter.[2] A1-1

Under the terms of State Parks' CDP for Oceano Dunes, the Commission must undertake regular reviews of the efficacy of the CDP's protection of environmentally sensitive habitat areas. As a result, the Commission will need to take action on the CDP in the near future to fulfill that obligation. The scope and substance of that future action is unclear at this time, but it is likely that it will differ from the scope of activities evaluated under the current draft HCP. This could result, if the HCP/ITP is finalized before the Commission acts, in a misalignment between the activities authorized under the HCP/ITP and the activities authorized under the CDP. We understand that the HCP/ITP process has been ongoing for some time, and that State Parks is interested in moving forward with finalization in the near future. However, we felt it was important to raise this potential issue now so that all parties are aware of it. A1-2

Please do not hesitate to contact me by email at kevin.kahn@coastal.ca.gov or by phone at (831) 427-4863 if you have any questions or would like to discuss these comments.

Sincerely,

Kevin Kahn

Kevin Kahn
Central Coast District Manager
California Coastal Commission

cc: Julie Vance, California Department of Fish and Wildlife Region 4 Manager
Jimmy Paulding, San Luis Obispo County District 4 Supervisor
Trevor Keith, San Luis Obispo County Director of Planning and Building
Megan Martin, City of Grover Beach Community Development Director

[1] For example, 2020-2024 monitoring data were used to inform the decision to increase the western snowy plover adult breeding objective to 180 breeding adults from the proposed 155 breeding adults in the 2020 draft HCP.

[2] See our letter to USFWS on the previously proposed HCP dated December 19, 2020 for our articulated concerns and suggestions, which is incorporated in its entirety herein by reference.

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May 29, 2020

Ronnie Glick, Senior Environmental Scientist
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Oceano Dunes District
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Lena Chang, Senior Wildlife Biologist
United States Fish and Wildlife Service
Ventura Fish and Wildlife Office
2493 Portola Road, Suite B
Ventura, CA 93003

**Re: United States Fish and Wildlife Service (USFWS) and California Department of Parks and Recreation (State Parks) Proposed Oceano Dunes District Draft Habitat Conservation Plan and Draft Environmental Impact Report**

Dear Mr. Glick and Ms. Chang:

The California Coastal Commission (Coastal Commission) is the state agency responsible for implementing the California Coastal Act (Coastal Act), which regulates development in the coastal zone, including the areas covered by this Habitat Conservation Plan (HCP).[1] The Coastal Act's habitat protection policies are primarily based on protection of environmentally sensitive habitat areas (ESHA), which are defined by the rarity or value of the habitat as a whole. The presence or absence of threatened, endangered, and/or otherwise listed species in those areas often plays an important role in ESHA determinations. Importantly, the Coastal Act and applicable LCPs prohibit non-resource dependent development in ESHA, and the entire Oceano Dunes State Vehicular Recreation Area (ODSVRA) has been designated ESHA by the Commission, including in the certified San Luis Obispo County LCP. As a result, the Coastal Commission appreciates the opportunity to comment on the Draft HCP (DHCP) and its associated Draft Environmental Impact Report (DEIR) because the protection of special status species may affect the health of ESHA protected through the Coastal Act. The Commission's obligations under the Coastal Act are, however, independent of and

[1] The Coastal Commission shares jurisdiction over the areas covered by this DHCP pursuant to the Coastal Act with San Luis Obispo County and the cities of Grover Beach and Pismo Beach, all of which have certified local coastal programs (LCPs), with almost all of Oceano Dunes State Vehicular Recreation Area subject to the County's Local Coastal Program.

distinct from those exercised by USFWS in implementing the Endangered Species Act (ESA).[2]

The DHCP addresses the management and protection of 10 ESA-listed species[3] within the 5,005-acre Oceano Dunes District program area, which is comprised of both Pismo State Beach and the Oceano Dunes State Vehicular Recreation Area (the latter referred to herein as ODSVRA, Oceano Dunes, or Park), and is meant to be the underlying document on which a future USFWS Incidental Take Permit (ITP) would be based. Under the ESA, the measures included in the HCP must minimize and mitigate, to the maximum extent practicable, the impacts caused by State Parks proposed 52 "covered activities" (including motorized recreation, camping, and natural resource management).

Oceano Dunes currently operates under two primary coastal development permits (CDPs) under the Coastal Act that govern the kinds, locations, and intensities of use and development at the Park, as well as the resource protection measures that are required to ensure consistency with the Coastal Act and the County's LCP. This includes Coastal Commission CDP 4-82-300 as amended, which covers overall off-highway vehicle (OHV), camping, and other use parameters for the Park, as well as Coastal Commission CDP 3-12-050, which authorizes implementation of a dust abatement program at Oceano Dunes. Importantly, both of these CDPs include ongoing obligations that require regular review and adaptation. For example, CDP 4-82-300 requires an annual Coastal Commission review of Park operations, which can lead to modifications of such operations through each such review.

We have the following comments, observations, and suggestions, first for the DEIR and then on the DHCP, although comments on one are generally applicable to the other. These comments are informed, in part, by the Coastal Commission's direction to State Parks at a July 2019 hearing for the most recent annual review of CDP 4-82-300, where the Coastal Commission required State Parks to address 15 management measures as part of its current Public Works Plan (PWP) efforts. These management measures included evaluating alternative Park entrances, prohibiting vehicle use at night, expanding and making the seasonal exclosure permanent, prohibiting vehicular crossings of Arroyo Grande Creek, reducing vehicular use limits, and a series of similar

[2] We also note that the California Department of Fish and Wildlife (CDFW) independently has authorities under the California Endangered Species Act and other state laws, including the requirement to review and approve a Natural Community Conservation Plan (NCCP) to address any potential take of California Endangered Species Act-listed species, most of which overlap with federally listed species. It is our understanding that State Parks is in the preliminary stages of preparing such an NCCP for ODSVRA, and we suggest that USFWS coordinate with CDFW as it works towards its final HCP to ensure that these documents and their requirements are harmonized.

[3] These are the bird species Western snowy plover (*Charadrius nivosus nivosus*) and California least tern (*Sternula antillarum browni*); the amphibian species California red-legged frog (*Rana draytonii*); the fish species tidewater goby (*Eucyclogobius newberryi*); and the plant species marsh sandwart (*Arenaria paludicola*), La Graciosa thistle (*Cirsium scariosum* var. *loncholepis*), surf thistle (*Cirsium rhothophilum*), beach spectaclepod (*Dithyrea maritima*), Nipomo Mesa lupine (*Lupinus nipomensis*), and Gambel's watercress (*Nasturtium gambelii*).

measures designed to protect sensitive habitat values pursuant to the Coastal Act.[4] One general comment that relates to both the DEIR and DHCP is that many of the alternatives rejected in these documents are the same management measures that the Coastal Commission directed State Parks to address in its PWP. We suggest that the DHCP and the DEIR be revised to more thoroughly address these potential management measures.

Comments on the DEIR

*DEIR Coastal Act Consistency Conclusions*

One of our significant concerns with the DEIR is that it concludes that none of the activities proposed in the DHCP would require an amendment to existing CDPs, including CDP 4-82-300's OHV and camping use parameters (DEIR Section 4.1.3.3). However, except for the no project alternative, all of the alternatives (including the preferred alternative) in the DEIR and DHCP propose to make material changes to OHV/camping use protocols, including reducing the southern exclosure acreage and boundary by opening up as much as approximately 109 acres of dune ESHA to year round OHV activity [CA-50], opening up a new 40-acre ESHA area near Oso Flaco Lake to OHV activity [CA-42], and mechanical beach grooming [CA-21]. Because these proposed activities constitute development as defined in the Coastal Act, all of them will require either a new CDP or an amendment to an existing CDP and must be found consistent with the Coastal Act and/or the LCP, including the policies prohibiting non-resource dependent development in ESHA. We recommend that Section 4.1.3.3 and the "Development" discussion on pages 4-13 to 4-14 be modified to reflect that these activities will require authorization by the Coastal Commission under the Coastal Act and that CDP authorization be added to Section 2.5 as a required permit. **A1-3**

We also are concerned about the conclusions on DEIR page 4-14 and Table 4-3 that these new covered activities would not conflict with the Coastal Act. We believe that the Coastal Commission would find that at least several of them do conflict with applicable LCPs and the Coastal Act. For example, allowing significant new areas of OHV use in dune ESHA [CA-42 and CA-50] is not consistent with Section 30240 of the Coastal Act or the equivalent sections of the County's LCP. However, the "Land Resource" section of the DEIR does not analyze whether opening up new dune ESHA areas to OHV use would be consistent with LCP and Coastal Act ESHA protection requirements. We believe that this omission is significant and recommend addition of this analysis and recognition that the proposed development raises Coastal Act and LCP conflicts because it is not resource dependent and will adversely impact ESHA. In addition, we recommend that the DEIR sections on public access and recreation be revised to recognize that these Coastal Act policies must be implemented consistent with the requirement to protect natural resource areas (see Coastal Act Sections 30210 and 30214). Beach grooming [CA-21] and snowy plover chick and egg capture [CA-12b] **A1-4**

[4] The summary of the Commission's July 2019 action, as well as the Commission's comment letter to State Parks emanating from it, are attached to this letter, and help provide context and rationale for the Commission's action.

may also raise Coastal Act consistency issues and will require additional analysis by the Coastal Commission. For example, mechanical beach grooming is likely to impart further harm to the beach infaunal community that support the beach foodweb, including western snowy plover and California least tern. A1-4

*DEIR Biological Resources Conclusions*

DEIR Section 6.3.3 appears to underestimate the potential impact of the proposed activities on sensitive habitats. For example, the analysis of beach grooming [CA-21] acknowledges that such activities will be taking place in ESHA and that they may remove "favorable constituents within [snowy plover] and La Graciosa thistle critical habitat as well as ESHA by altering dune composition and topography. Specifically, mechanical trash removal could reduce organic surface materials (e.g., driftwood) and microtopography" (DEIR p. 6-109). The DEIR asserts that this ESHA has reduced value because it has been heavily used for recreational purposes and therefore beach grooming has a less than significant impact. The Coastal Act, however, does not provide lesser protection for potentially degraded ESHA and we recommend that this analysis be modified so that it does not purport to provide lesser protection for areas of ESHA which have experienced recreational use. A1-5

In addition, the discussion of the reduction of the seasonal exclosure [CA-50] concludes that because OHV use is currently allowed in these areas for part of the year, there will be a less than significant biological impact if such use is extended to also be allowed during the western snowy plover (WSP) and California Least Tern (CLT) breeding season. As discussed in more detail below, we do not think that the evidence supports such a conclusion. WSP and CLT, and their chicks, are more vulnerable during the breeding season and require additional protections during those times, including protection from motorized vehicles. We recommend that this section be modified to analyze the different impacts to protected species that will occur if there were to be OHV use in critical habitat areas, including both during the breeding season and outside of it. A1-6

*DEIR Coastal-Dependent Development Statements*

We are also concerned about the statements in the DEIR that State Parks considers OHV use to be a "coastal-dependent development or use," as defined in the Coastal Act (DEIR p. 8-6). The Coastal Commission has found that that is not the case in past actions related to Oceano Dunes. Specifically, the Coastal Act defines and limits such uses to "development which requires a site on, or adjacent to, the sea to be able to function at all" (Coastal Act Section 30101). One may camp and ride OHVs (and horses) in non-coastal areas. Therefore, they are not activities that must take place along the coast to be able to function at all. The DEIR concludes that activities such as camping and vehicular recreation are "coastal-dependent" because they are taking place in beach and coastal dune areas. Simply because some activities are enjoyed at the beach or in coastal areas does not make them "coastal-dependent." This analysis would expand coastal-dependent development or uses to any development that one might prefer to do along the coast, such as a build a home with an ocean view, into a coastal-dependent development. Such an interpretation is not consistent with the A1-7

Coastal Act, and we request that the first paragraph, the first three bullets of Section 8.2.3, and any other similar statements/descriptions be removed from the final EIR. A1-7

*DEIR Alternatives Analysis*

With respect to alternatives, the DEIR considered a total of 11. As an initial matter, seven of these alternatives were dismissed without further evaluation, and four of them were further considered. Among the seven immediately rejected alternatives was a "No Take Park Operation" that would prohibit vehicle use in the Park, a "Changes in Oceano Dunes SVRA Access" alternative that would include either a bridge over Arroyo Grande Creek or a different access route to avoid its vehicular crossing, a "Restricted Riding Times" alternative that prohibited night riding and closed the Park to vehicle use seasonally, and an "Increased Vehicle Use Limits" alternative. These alternatives are among those that the Coastal Commission, in its July 2019 action, asked State Parks to address in its PWP, and we recommend that they also be fully evaluated here. A1-8

The four alternatives selected for further DEIR evaluation were the "No Project Alternative," whereby State Parks does not obtain HCP/ITP authorization and instead manages the Park as it currently does, a "Reduced Disturbance in High PM10 Emissivity Areas" alternative that retains portions of the now-300-acre seasonal exclosure, a "Permanent Year-Round Exclosures" alternative that would make the now-seasonal (March through September) exclosure year-round, and a "Reduced Vehicle Use Limits" alternative with an undefined reduction in allowed OHV use.

Each of these alternatives were ultimately dismissed. The most common rationale cited by the DEIR for dismissal was the determination that the minimal, at best, benefit to habitat management and reduced take would not outweigh the significant impact on coastal vehicular recreation. For example, the reduced riding/no take alternatives were dismissed because they "would not eliminate the potential for take from non-motorized uses or from any CDPR vehicles needed to enter the area for park operations" and would do so at the expense of recreational opportunities, which is "incompatible with the recreational purpose of the SVRA…" (DEIR p. 9-3). The alleged limited reduction in take was also the reason for dismissing the use of an Arroyo Grande Creek bridge to avoid vehicular creek crossings ("Furthermore, the alternative would not reduce the potential for take of SNPL and CLTE associated with park visitor use and operations or otherwise reduce impacts of the proposed HCP" (DEIR p. 9-5)) and night riding prohibition alternatives ("As a result, restricting nighttime vehicle use would not likely reduce any potential take impacts of the HCP covered species" (DEIR p. 9-6)). Making the exclosure year-round or expanded was dismissed because "This alternative may reduce but not eliminate the potential risk for take" (DEIR p. 9-14) and "This loss of shoreline access conflicts with project objectives to balance conservation and recreation demands, particularly to preserve, manage, and expand recreational opportunities and to manage, maintain, and maximize unique coastal camping and recreational amenities" (DEIR p. 9-17). And finally, reducing vehicle use limits was dismissed because, even though take would likely be reduced with fewer vehicles, "the reduction in risk is difficult to assess and may not result in actual reduced take" (DEIR p. 9-18).

We are concerned that the alternatives analysis does not adequately analyze the potential biological impacts of each alternative nor the biological benefits of the alternatives that were rejected. For example, with respect to OHV use, there are a number of studies that have evaluated the adverse impacts of OHV use on beaches (including both intertidal and upper beach zones) and dunes. One such study found that OHV recreational activity causes the highest levels of environmental harm to beaches and dunes of any recreational activity.[5] Another identified such harms to include 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.[6] As such, it is unclear why the reduced vehicle use limits alternative was rejected, considering that the DEIR does state that take would likely be reduced under this alternative. It then states, however, that because it is difficult to assess the reduction in take, it may not result in reduced take. This conclusion does not appear to be supported by the rest of the analysis related to this alternative. A1-9

With respect to vehicular crossings at Arroyo Grande Creek, vehicles currently drive through the creek at a variety of depths and also breach the banks of the creek in such a way that the creek banks can erode considerably and widen the creek channel. Destruction of creek banks has the effect of expanding and altering the creek bed in ways that reduce the water depth and limit the time period over which migration between the creek and ocean is viable for fish species, potentially reducing their ability to enter and exit the creek and to reproduce. The period of direct connection between Arroyo Grande Creek and the ocean is critical for anadromous fish species, such as steelhead, which complete part of their life cycle in the ocean, and tidewater goby, which can be flushed from creeks, and rely on the period of creek-ocean connectivity to recolonize freshwater creeks and to maintain their populations regionally[7]. Moreover, any vehicular use near the Arroyo Grande Lagoon that impacts its mouth and causes it to breach precipitously and rapidly, such as through such creek morphological changes, may also have the effect of flushing tidewater goby from the lower reaches of the creek into the ocean, where some fraction of the population will meet their demise. California red-legged frog may also be present around Arroyo Grande Lagoon and Creek during this time period, and the frogs themselves, as well as their egg sacs, may also be A1-10

[5] 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).

[6] 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).

[7] The south-central California coastal steelhead, although federally threatened, is not proposed to be covered in this HCP, apparently based on an earlier agreement with NOAA Fisheries. However, they do occupy Arroyo Grande Creek. In addition, tidewater goby is a federally endangered fish species, whose population fluctuates inter-annually in Arroyo Grande Creek. Maintenance of the population regionally relies on at least some of the rivers and creeks in any one location to support populations of this species in all years.

harmed by a precipitous breaching event. Therefore, we recommend that the EIR analyze in more depth the potential adverse impacts of vehicles driving through Arroyo Grande Creek during the time of year when rain water has elevated the banks of Arroyo Grande Creek and breaching is likely, and following any breach event. A1-10

We also recommend that the EIR include a more complete analysis of the alternative to make the seasonal exclosure permanent and/or to expand it. There are a large number of plovers found in areas outside of the existing exclosure, including 15 that were found dead in 2018 (8 of which were found crushed next to tire tracks). Plovers naturally seek to avoid encounters with humans,[8] so the presence of a refuge away from human pressures, particularly OHV riding, may reduce plover loss during the overwintering season, from October through February of each year, and at a minimum would allow recovery of beach-dwelling invertebrate species on which WSP feed. In addition, there is evidence that the southern exclosure is not large enough for the current plover population, given the very large number of nests. In 2018, 66 were found nesting outside, but adjacent to, the southern exclosure, and aggressive territorial behavior in areas of overcrowding has been observed in recent years. Plovers also frequently nest between the westward edge of the exclosure and the ocean and in areas south of the exclosure, known as Oso Flaco south. We recommend that the EIR include these factors when assessing this alternative. A1-11

For the alternative that would eliminate riding at night, we recommend that the EIR analyze the likely effects of artificial night lighting on migrating bird species and mammals, including avoidance behaviors, disorientation, disruption of foraging and migration patterns, increased predation risk, and disruption of circadian rhythms.[9] In addition, noise or sound plays an important role in an ecosystem. Activities such as finding desirable habitat and mates, avoiding predators, protecting young, and establishing territories are all dependent on the acoustic environment. A growing number of studies indicate that animals, like humans, are stressed by noisy environments.[10] The listed species at Oceano Dunes are all more vulnerable to the impacts identified above at night. This information should be included when assessing the elimination of the night riding alternative. A1-12

Comments on the DHCP

Our primary concern with the DHCP is that although the HCP is intended to “provide habitat-level protection and management and minimize human-related impacts to key A1-13

[8] Lafferty KD. 2001. Disturbance to wintering western snowy plovers. Biological Conservation 101:315-325. Lafferty KD, Goodman D, Sandoval CP. 2006. Restoration of breeding by snowy plovers following protection from disturbance. Biodiversity and Conservation 15:2217-2230.

[9] Rich, C. & T. Longcore (Eds.) 2006. Ecological Consequences of Artificial Night Lighting. Island Press, Washington. 458 pgs.

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

threatened or endangered wildlife," the DHCP instead outlines management protocols that would actually decrease existing protection for such species, even though existing management has already resulted in significant take of species such as the western snowy plover[11] (DHCP p. 1-1). Thus, by allowing even more take than is currently experienced at the Park, the DHCP does not appear to meet the requirement to minimize the impacts of the covered activities. A1-13

*DHCP Alternatives Analysis*

As with the DEIR, we have similar concerns regarding the adequacy of the DHCP's alternatives analysis. The DHCP identifies one of the two commonly considered alternatives as a "no project alternative in which no permit would be issued and take would be avoided" (DHCP at p. 8-1). However, while the DHCP analyzes a "no project" alternative, it is not one in which take is avoided. Instead, the DHCP recognizes that existing operations currently result in take and rejects this alternative because USFWS would still be required to enforce the Endangered Species Act and such enforcement might result in operation shutdowns in order to prevent take. In essence, this alternative is rejected not because it is infeasible or because it would result in take of listed species, but instead because it would result in greater protection of listed species. We therefore believe that this alternative should be analyzed further. A1-14

The second alternative analyzed in the DHCP would retain the current size of the southern exclosure. It was rejected, however, even though it would result in less take of listed species than the chosen alternative, because the DHCP concludes that the reduction or elimination of the southern exclosure would better meet Oceano Dunes' "recreational needs", and that take under the chosen alternative would be minimized. But this analysis does not find that this alternative is infeasible and thus does not meet the requirements that HCPs minimize and mitigate take to the maximum extent feasible. We believe that this alternative should be analyzed further as well.

We also recommend that the HCP also consider alternatives that reduce the current level of OHV use in the Park, including an evaluation of the 15 measures that State Parks is required by the Coastal Commission to address in its proposed PWP by this summer.[12] Further, another alternative we recommend be evaluated is one in which there is no OHV use in the Park. This is an alternative that the Coastal Commission identifies in its July 2019 action (again, see attached), and it is one that would clearly reduce take of the listed species covered by the HCP. While we recognize that this A1-15

[11] As USFWS has found, existing Park operations (i.e., the aforementioned 'status quo') are already causing high levels of take (see, for example, USFWS letter titled "Oceano Dunes State Vehicular Recreation Area Endangered Species Act Violations and Habitat Conservation Plan" dated March 29, 2016; and USFWS letter titled "Oceano Dunes State Vehicular Recreation Area, Second Notice of Additional Endangered Species Act Violations" dated December 22, 2016).

[12] State Parks is required to submit a proposed PWP for Commission consideration that addresses all of the Commission's direction and requirements by summer of this year, and it is currently scheduled to be heard at the Commission's September 2020 meeting in San Luis Obispo. However, in light of the current COVID-19 pandemic, it seems likely that this hearing schedule will be delayed.

alternative may ultimately not meet State Parks' OHV objectives, we still believe that it is an important alternative to be analyzed through this HCP.

In sum, without an analysis of a broader range of management and mitigation alternatives, we do not think that the DHCP adequately demonstrates that the chosen alternative mitigates and minimizes the impacts of Park operations on the 10 listed species "to the maximum extent practicable," as is required under ESA.[13] A1-15

*DHCP Biological Analysis*
In addition to our concerns with the breadth of alternatives analyzed in the DHCP, we have concerns regarding the DHCP's assessment of biological impacts. We recommend that the HCP include consideration of the following:

1. With regard to WSP and CLT, the DHCP proposes reducing the existing 300-acre seasonal southern exclosure to 191 acres, and thus seasonally increasing OHV use by 109 acres. In addition, it proposes opening to OHV use another currently off-limits 40-acre dune ESHA area supporting native dune vegetation very near to the seasonal exclosure and Oso Flaco Lake. Opening up this undisturbed dune area will encourage new traffic adjacent to the existing seasonal exclosure and increase the risk of take of WSP chicks and nesting adults. It is worth noting that all portions of the seasonal exclosure targeted for reduction, and all of the area near the shoreline in Oceano Dunes as a whole, are USFWS-designated "critical habitat" for WSP. Further, the areas of the seasonal exclosure slated to be opened up to OHV use are among the most widely-used for nesting (i.e., Subarea 6) or serve as important buffer areas for highly used nesting areas (i.e., the east boneyard area buffers and the west boneyard exclosure). The WSP population is already limited in the Park due to a dearth of areas free from OHV use. We recommend that the DHCP include additional analysis of these proposed reductions in protected areas, including consideration of the following: A1-16

    a. Between 2005 and 2018, Subarea 6, which is proposed to be opened for OHV use under the DHCP, was the location of 25–45% of all WSPs and 35–80% of all CLT nests during the breeding period.

    b. The northern portion of Subarea 6 (slated to be removed from protection first), has been the location of the CLT communal night roost over the last several years. According to the USFWS, "secure roosting and foraging areas are

[13] See, for example, *National Wildlife Federation v. Babbitt*, 128 F. Supp. 2d 1274, 1291-1292 (E.D. Cal. 2000).

essential to the recovery of the species,"[14] and may serve as a means for lowering predation at CLT nesting sites.[15]

c. Although the DHCP does state that Subarea 6 would be removed in stages, and only if species' objectives are met, those objectives are set far below current and historical occupancy and fledgling rates, practically ensuring they will be easily met. For example, the DHCP sets 155 WSP breeding pairs as its annual goal, which is substantially lower than the five-year average of 202 breeding pairs. Similarly, the DHCP establishes a goal of 1.0 fledgling per adult male plover per year. However, the five-year average fledgling rate is 1.68. For CLT, the DHCP goals of 41 breeding pairs per year and a fledge rate of 1.0 juveniles per nesting pair is also lower than recent documentation. These standards have the effect of allowing a decrease in breeding and fledgling success. The DHCP does not provide evidence to support how these lower rates were derived or how they minimize and mitigate the effects of the covered activities.

A1-16

d. Further, the removal of Subarea 6 will cause nests established in the remaining exclosure areas to be packed more tightly, and there is already evidence that the tight spacing of WSP and CLT nests within the existing 300-acre seasonal exclosure acreage has led to adult territorial aggression when chicks from one brood wander into the territory of another (hence the Coastal Commission's July 2019 recommendation to increase the size of the exclosure area).

e. The DHCP also proposes that bump outs or individual nest exclosures would be used if plovers nest in Subarea 6 following the removal of fencing. In our view, this is not an equivalent means of protection. Although individual nest exclosures have been known to provide nest protection, they can also lead to greater predation of adult WSPs when avian predators perch on top of the exclosures and consume adults as soon as they leave the nest, with mortality of nest eggs or chicks soon to follow.

2. The proposed closure of the east boneyard exclosure and opening up of an additional 40 acres to OHV riding just north of Oso Flaco Lake are also likely to increase take of WSP and CLT. Although the DHCP notes that fewer birds have nested in the east boneyard location in recent years, this exclosure area still provides an important buffer to the west boneyard area, where more WSPs nest. This buffer helps maintain a substantial distance between nesting birds and OHV riders and pedestrians. Moreover, the east boneyard exclosure has acted as a

A1-17

[14] See USFWS' Carlsbad California Office (2006), California least tern *Sternula antillarum browni,* Five-year review, summary and evaluation, at https://www.fws.gov/carlsbad/SpeciesStatusList/5YR/20060926_5YR_CLT.pdf.

[15] See Atwood, Jonathon L., (1986), Delayed Nocturnal Occupation of Breeding Colonies by Least Terns, *Sterna antillarum*, Auk v. 103, pgs. 242-244; Wilson, Erika C., Hubert, Wayne A., and Anderson, Stanley H., "Nocturnal Roosting by Interior Least Terns Early in the Nesting Season" (1991), Nebraska Bird Review (417) (at https://digitalcommons.unl.edu/nebbirdrev/417).

barrier for through traffic between northern and southern areas of the park during the nesting season, and from northern access to the Oso Flaco Lake area. If it is removed, it is highly likely that OHV traffic will increase in this location, thereby increasing the risk of vehicle collisions with WSP. A1-17

3. There has been an alarmingly high take of WSP at Oceano Dunes in recent years. In 2018, there was one documented CLT and 36 WSP deaths from all causes to chicks, juveniles and adults. Many additional birds were injured. In 2019, the documented death rates were 3 for CLT and 26 for WSP. It was also noted that several of these individuals were found amidst tire tracks.[16] Given the difficulty of locating small birds across this vast area, these numbers undoubtedly underestimate the actual take of these listed species. Despite these issues, the DHCP would allow increased take by reducing existing protections. A1-18

4. The success criteria for WSP and CLT, as noted in 1(c) above, raise concerns more generally about the adequacy of the analysis of appropriate minimization and mitigation measures in the DHCP. We recommend that the DHCP focus more on maximizing habitat protections and seeking ways to increase the occupancy of breeding pairs and fledgling rates. We are concerned that the DHCP lowers the bar for success by setting more modest goals that could then be used as justification to open up additional acreage to OHV activity, thereby neither minimizing impacts to protected species nor maximizing mitigation. A1-19

5. Also notable within the DHCP are the omission of several measures that would appear to be relatively easy to implement. For example, the discussion of plover protections focuses primarily on nesting WSP and CLT. Many WSP, however, overwinter at Oceano Dunes, and this population is also subject to high predation. In addition, a visit to Oceano Dunes reveals many locations where speed limits of 15 mph are posted. Yet, speeds in excess of 15 mph appear to be commonplace. A vigorous speed limit enforcement program with park ejections and penalties could go a long way to reducing this threat to all species that share the park with human recreationists, and would likely help to better protect public safety as well. A1-20

6. One other measure for which myriad solutions exist include the development of better practices for solid waste management. A recent visit to the park revealed open dumpsters at Post 2. This area is known to be a major attractant for predators, especially gulls (hundreds have been detected over a single hour when conditions A1-21

[16] See Iwanicha, J., A. Clark, R. Slack, S. Robinson (Oceano Dunes District), and D. George (Point Blue Conservation Science), “Nesting of the CA least tern and western snowy plover at Oceano Dunes State Vehicular Recreation Area, San Luis Obispo County, California, 2019, Appendix H”; and see California Department of Parks and Recreation Off-Highway Motor Vehicle Division, Oceano Dunes District “Nesting of the CA least tern and western snowy plover at Oceano Dunes State Vehicular Recreation Area, San Luis Obispo County, California, 2019, Appendix H”.

are right) that are known to predate WSP and CLT. This measure is not discussed in the DHCP. A1-21

7. The prohibition on vehicular use at night, including night OHV riding, would also undoubtedly reduce mortality of WSP and CLT, as well as night-migrating California red-legged frogs (see also the discussion above). A1-22

8. Further, although some educational materials are posted regarding the presence of threatened and endangered species in the park, a robust education program that sought to enlist the stewardship of park visitors and better inform them about activities likely to cause take would undoubtedly be beneficial. A1-23

9. Beyond the changes that will affect WSP and CLT successful breeding and population recovery, there are no proposed changes to the crossing of Arroyo Grande Creek, despite the probability that this activity leads to take of tidewater goby every year, as described in more detail above. The DHCP describes the dynamic tendency for Arroyo Grande Creek to morph and change as it breaches the lagoon mouth and forms ponds that likely contain tidewater goby and other fish species. Regarding management of these dynamic ponds, the DHCP states: "it is not feasible for CDPR staff to move fencing and closure signage each time the area changes and visitors may not know they are prohibited from driving through ponded areas." To reduce the possibility of take during this dynamic period, which likely only occurs for a period of days or at most weeks, it appears that riders could easily be prohibited from entering this area for the entire period, only requiring signs to be erected a single time, and only effecting ridership for a short period of the year. A1-24

10. Personnel and cost limitations are invoked in several passages within the DHCP for measures that would likely reduce harm to listed species but that are dismissed, yet in many cases relatively simple solutions could be productively employed. The DHCP also fails to establish that even if these measures increase costs, such cost increases are not feasible mitigation measures. A1-25

Conclusion

While we have identified a number of concerns with the DEIR and DHCP, we strongly support the efforts of State Parks and USFWS to address the significant issues associated with protection of special status listed species at Oceano Dunes and Pismo Dunes State Beach. We understand that the DHCP and DEIR represent many years of work for your agencies and for the many stakeholders involved in this process, and we appreciate all of the work that has gone into producing these draft documents.

We also note, however, that rather than completing the HCP at this time, State Parks and USFWS could wait to further consider the HCP and its associated EIR until after the Coastal Commission takes action on State Parks' PWP. The content of the PWP would then be available to inform the range of alternatives and management measures that could need to be considered in the HCP and EIR. Although this would delay the HCP A1-26

and EIR process, having that process commence after the Commission acts on the PWP would provide greater certainty to the agencies involved, and USFWS, State Parks, and the Coastal Commission would have the benefit of the information developed through the completion of the PWP (and/or LCP/CDP changes). A1-26

Overall, we hope that this letter provides constructive comments on the DEIR and DHCP, especially in the context of State Parks' efforts to prepare a PWP for Coastal Commission review and the range of alternatives the Coastal Commission asked it to address in that Plan. We would be happy to help discuss any particular comments or strategies that you may want to employ moving forward in your processes. In any case, we hope that our comments help strengthen these documents and would be very willing to work with either or both of your agencies to address our comments collaboratively. Please do not hesitate to contact me if you have any questions or concerns.

Sincerely,



Kevin Kahn
Central Coast District Supervisor
California Coastal Commission

Attachments: (1) Coastal Commission letter to State Parks dated July 12, 2019 (describing coastal resource issues and constraints affecting Park operations, and providing direction to State Parks on those issues); (2) Coastal Commission letter to State Parks dated July 23, 2019 (describing the Commission's July 2019 action)

cc: Lisa Mangat, California State Parks Director
Liz McGuirk, California State Parks Chief Deputy Director
Dan Canfield, California State Parks Acting OHV Deputy Director
Jim Newland, California State Parks PWP Manager
Kevin Pearce, California State Parks Acting Oceano Dunes Superintendent
Trevor Keith, San Luis Obispo County Planning Director
Paul Souza, United States Fish and Wildlife Service Region 8 Director
Julie Vance, California Department of Fish and Wildlife Region 4 Manager

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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 though 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 exclosure 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.

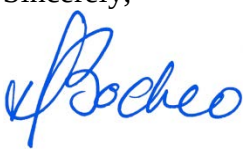
- **Next Steps.** The problems identified in this letter are significant and fundamental inconsistencies with the Coastal Act and suggest that it is time to start thinking about ways to transition the ODSVRA away from OHV use to other forms of public access and recreation. Low-impact car beach camping, 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,[1] and further designates the Park's wetland and lake areas as Sensitive Resource Areas (SRAs)[2] (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.[3] 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,[4] 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.[5] 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

[1] 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.

[2] Including the Oso Flaco Lakes SRA, the Dune Lakes SRA, and the Black Lake Canyon SRA portions of the Park.

[3] 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).

[4] 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.

[5] See *McAllister v. Coastal Commission* (2009) 169 Cal.App.4th 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."[6] 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,[7] 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.[8] 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".[9] The underlying issue is, however, that these types of fundamental LCP inconsistencies cannot be resolved through LCP

[6] See South County Coastal Area Plan Recreation Policy 9 and Figure 4.

[7] Two lawsuits, which were ultimately consolidated (Friends of Oceano Dunes v. County of San Luis Obispo and Sierra Club v. State of California).

[8] 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.

[9] 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,[10] 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*.[11] 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),[12] 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

[10] 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.

[11] 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).

[12] 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,[13] 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.[14] 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

[13] 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).

[14] 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.[15,16]

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.[17] Similarly, in 2015 and 2016 letters,[18] 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.[19]

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.[20] Further, although

[15] 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.

[16] 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.

[17] See March 29, 2016 and December 22, 2016 USFWS letters.

[18] See July 3, 2015 and March 3, 2016 CDFW letters.

[19] 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.

[20] 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.[21]

In attempting to address some of these ESA issues, State Parks maintains a seasonal habitat protection exclosure 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 exclosure 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.[22] 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

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.

[21] 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.

[22] 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%,[23] and a community that was designated as an "Opportunity Zone" by Governor Brown in 2018.[24] 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."[25] 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

[23] 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.

[24] Pursuant to the Tax Cuts and Jobs Act of 2017.

[25] 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 exclosure 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,[26] but to do so is to suggest that State Parks should simply

[26] 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.

**CALIFORNIA COASTAL COMMISSION**
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July 23, 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:

As you know, the California Coastal Commission held a public hearing last Thursday July 11th in San Luis Obispo to review State Parks operations and management at the Oceano Dunes State Vehicular Recreation Area (ODSVRA) in relation to the base coastal development permit (CDP) that originally authorized interim vehicle use parameters at the site back in the early 1980s (CDP 4-82-300 as amended). Following that July 11th public hearing, the Commission deferred action on Commission staff's recommended operational and other short-term changes to the CDP terms and conditions, and instead took an action:

1. Directing the Commission Chair to send a comment letter (identified in the staff report as Exhibit 13 – sent separately from this letter, and dated July 12, 2019) providing Coastal Commission direction to State Parks moving forward as regards operational and management changes that the Commission believes are necessary at ODSVRA to ensure Coastal Act consistency, including through State Parks' proposed Public Works Plan (PWP);

2. Requiring State Parks to incorporate all of staff's recommended operational and other short-term changes in the staff report (see "Staff-Recommended Additional CDP Special Conditions" attachment) as permanent conditions through the PWP;

3. Requiring State Parks to provide the Commission with in-person quarterly reports on the progress of State Parks' PWP efforts over the next year (i.e., through summer 2020); and

4. Requiring State Parks to bring forward a PWP for Commission consideration that addresses the staff-recommended operational and other short-term changes (see attachment) and the Commission's comments and direction (see July 12, 2019 letter), otherwise by the summer of 2020.

We look forward to working with you and your staff over the next year, and beyond, to help bring about needed change at ODSVRA to ensure consistency with the Coastal Act. If you have any questions, please don't hesitate to contact me.

Sincerely,

JOHN AINSWORTH
Executive Director

Attachment: Staff-Recommended Additional CDP Special Conditions

1. **Predator Management Plan.** By October 31, 2019, the Permittee shall submit for Executive Director review and approval a Predator Management Plan. The Plan shall be prepared by a resource ecologist (or ecologists) with experience with sensitive species and predation issues, shall be based on consultation with USFWS, and shall identify the measures to be implemented to protect sensitive species (including Western snowy plover and California least tern) from predation, including by coyotes, raccoons, skunks, opossums, ravens, gulls, owls, and peregrine falcons. At a minimum, the Plan shall identify measures to better manage trash and food waste enclosures, and BMPs to better address predation of sensitive species, including in terms of fencing surrounding all vegetated dunes suitable for predator management. The Permittee shall immediately implement the Predator Management Plan upon Executive Director approval.

2. **Vehicular Enforcement Plan.** By October 31, 2019, the Permittee shall submit for Executive Director review and approval a Vehicular Enforcement Plan. The Plan shall identify the measures to be taken to comply with and actively enforce all CDP ODSVRA vehicular use limits, all vehicular speed limits, and all other vehicular requirements associated with the CDP, including through additional signs, rangers, and parameters for verifying that the number of vehicles in the Park do not exceed maximum allowances. The Permittee shall immediately implement the Vehicular Enforcement Plan upon Executive Director approval.

3. **Fencing Augmentation and Enhancement Plan.** By October 31, 2019, the Permittee shall submit for Executive Director review and approval a Fencing Augmentation and Enhancement Plan. The Plan shall identify additional fencing to be installed to better protect coastal resources (including additional fencing in the South Oso Flaco Lake area, fencing suitable for enhanced predator management, fencing to better define the southern exclosure, and fencing to ensure all vegetated dune areas are appropriately fenced off). The Permittee shall immediately implement the Fencing Augmentation and Enhancement Plan upon Executive Director approval.

4. **Public Outreach Plan.** By October 31, 2019, the Permittee shall submit for Executive Director review and approval a Public Outreach Plan. The Plan shall be designed with the goal to maximize use of appropriate beach and dune areas by lower-income, youth, and tribal parties, where such Plan shall identify all measures and venues to be used to advertise and increase awareness of such available uses (e.g., ODSVRA website, press release, calendar listings, ads on radio, print ads, social media (including Facebook, Twitter, and Instagram), etc.). The Plan shall be designed to reach as many potential lower-income, youth, and tribal audiences as possible, including audiences that might not normally be reached through traditional and local means (e.g., inland communities). The Permittee shall immediately implement the Public Outreach Plan upon Executive Director approval.

5. **Monitoring Program.** All CDP requirements associated with the Technical Review Team (TRT) shall be deleted, and the role and responsibilities currently attributable to the TRT shall instead be incorporated into a Monitoring Program that will be used by the Permittee to monitor Park use and management under the CDP, where the information collected pursuant to such monitoring will be provided to the Commission annually. By December 31, 2019, the

Permittee shall submit for Executive Director review and approval the Monitoring Program. The Program shall describe the structure, content, and methods for ongoing monitoring of public access and recreational uses, including vehicular recreation (accounting for attendance numbers, special events, and user types, etc.), and of dune resources, dune vegetation, and creek and wetlands resources (including but not limited to Arroyo Grande Creek) as well as sensitive species resources. The Program shall be sufficiently detailed to identify the data and information that must be collected to document the effectiveness of Park management activities in protecting the aforementioned dune and other coastal resources (including evaluating vehicular recreation and coastal resource trends, impacts, and issues facing Park operations), and to support recommendations for changes to Park management to better address any identified impacts. The Program shall provide for the submittal of annual monitoring reports to the Executive Director for review and approval, where each monitoring report shall include recommendations for changes to operational and management parameters under the CDP to better protect coastal resources, which shall be implemented as directed by the Executive Director's approval of the report if the Executive Director: (a) determines that no amendment is legally required to implement the changes; (b) deems the changes reasonable and necessary; and (c) determines that the changes do not adversely impact coastal resources. In any case, the Executive Director shall also have the discretion to schedule any particular monitoring report for a Coastal Commission hearing where the Commission will be asked to concur with the Executive Director's report approval and/or to make changes to operational parameters under the CDP otherwise to better protect coastal resources. The Permittee shall immediately implement the Monitoring Program upon Executive Director approval, and the first monitoring report shall be due to the Executive Director no later than July 31, 2020, with subsequent year's annual monitoring reports also due on July 31st.

6. **Special Events Protocol.** By October 31, 2019, the Permittee shall submit for Executive Director review and approval a Special Events Protocol. The Protocol shall specify that a separate CDP shall be required for all special events that could result in adverse impacts to coastal resources (including music festivals, concerts, OHV events (e.g., Huckfest), and any other special events that propose an intensity of use beyond those specified in the CDP), and shall provide a methodology for identifying, evaluating, mitigating (for projected coastal resource impacts), and permitting of any proposed special events. The Permittee shall immediately implement the Special Events Protocol upon Executive Director approval.

7. **Nighttime Vehicular Use Prohibited.** All vehicular and OHV activity within ODSVRA shall be prohibited during nighttime hours (i.e., from one-hour after sunset and to one-hour before sunrise), which restriction shall be a component of the Vehicular Enforcement Plan (see Special Condition 2 above).

8. **Arroyo Grande Creek Crossing Plan.** Vehicular crossings through Arroyo Grande Creek shall be prohibited, except for emergency vehicles, and all OHV and camping operations shall cease when the creek flows to the ocean. The Permittee shall regularly monitor the creek so as to ensure that users are not allowed to the southern side of the creek area when the creek may soon connect to the ocean, and so as to provide time for users then south of the creek area to exit the Park before it will connect to the ocean. By October 31, 2019, the

Permittee shall submit for Executive Director review and approval an Arroyo Grande Creek Crossing Plan that shall identify all measures to be taken to maintain consistency with this condition, including any materials to be provided to Park users, signs near the creek, and protocols for ensuring that there are no creek crossings under the conditions specified above, which restrictions shall be a component of the Vehicular Enforcement Plan (see Special Condition 2 above). The Permittee shall immediately implement the Arroyo Grande Creek Crossing Plan upon Executive Director approval.

9. **Updated Interim Use Limits.** Interim OHV, street-legal vehicle, and camping daily use limits shall be reduced an amount proportionate to acreage that has been removed from vehicular/OHV use (e.g., due to dust control requirements, other exclosures, etc.), including as future areas are taken offline. As of July 11, 2019, 1,048 acres are authorized for OHV and camping use, and interim use limits are as follows: (a) 1,806 street-legal vehicles per day; 700 camping units per night; and (c) 1,204 OHVs per day. A street-legal vehicle that also stays overnight counts as both a street-legal vehicle and as a camping unit. These restrictions shall be a component of the Vehicular Enforcement Plan (see Special Condition 2 above).

10. **No Interim Use Limit Exceptions.** The four exceptions (specified in Special Condition 3d of the fifth amendment to the CDP) that allow unlimited vehicular and OHV use on Memorial Day, Fourth of July, Labor Day, and Thanksgiving weekends and related days shall be eliminated, and interim OHV, street-legal vehicle, and camping use limits (see Special Condition 9 above) shall apply 365 days per year. These restrictions shall be a component of the Vehicular Enforcement Plan (see Special Condition 2 above).

11. **Entrance Study.** By December 31, 2019, the Permittee shall submit for Executive Director review and approval an Entrance Study. The Study shall evaluate changes that can be made to provide vehicular access into the Park in a manner that will reduce coastal resource impacts relative to the existing interim entrances, particularly as it relates Arroyo Grande Creek crossings and more normal and typical beach uses north of the riding area. The Study may be based upon Permittee's past analyses (i.e., including the '2006 Alternative Access Study Oceano Dunes State Vehicular Recreation Area' produced by Condor Environmental Planning Services, Inc.), but shall be updated as necessary to reflect any pertinent new information (including with respect to habitat protections for sensitive species) that may affect its evaluations and/or conclusions. The purpose of the Study is to identify a preferred entrance system for the Park, including through analysis of the environmental impacts and benefits (including with respect to dunes, habitats, creeks, beaches, neighborhoods, and community character) and feasibility associated with alternative entrances, including evaluating options across the same set of analysis factors and levels of detail. The Executive Director will agendize Commission consideration of the Entrance Study at the next annual CDP review, when the Commission may require changes to Park entrances in consideration of the Study and any other relevant information.

12. **Permanent Southern Exclosure.** The roughly 300-acre seasonal ESA vehicular exclosure area (see **Exhibit 2**) shall permanently exclude vehicles, and such area shall be restored as needed to enhance habitat values consistent with allowed passive public access use. By October 31, 2019, the Permittee shall submit for Executive Director review and approval a

Permanent Exclosure Plan. The Plan shall be prepared by a resource ecologist (or ecologists) with experience with sensitive species, shall be based on consultation with USFWS, and shall identify the measures to be implemented to make the seasonal exclosure permanent and to restore the area as needed to enhance habitat values for sensitive species (including Western snowy plover and California least tern) consistent with allowed passive public access use. The Permittee shall immediately implement the Permanent Exclosure Plan upon Executive Director approval.

13. **Authorize Dust Control Areas.** This CDP authorizes State Parks to implement specified airborne particulate matter emission ("dust") control and related monitoring measures at ODSVRA in order to reduce and control dust generated at ODSVRA consistent with the requirements of San Luis Obispo County Air Pollution Control District (APCD) and the California Air Resources Board (CARB) subject to all of the following:

    a. **Dust Control Measures.** Approved dust control measures include planting native dune vegetation, installing wind fencing, installing porous roughness elements, installing perimeter fencing (around emissive 'hot spots'), installing 'track out' devices at the Pier Avenue and West Grand Avenue entrances to ODSVRA, and installing native trees inland of ODSVRA. Soil stabilizers and straw bales shall only be utilized when the Executive Director determines that the proposed soil stabilizers and/or straw bales will be utilized in an amount, configuration, and composition that will not significantly disrupt dune habitat values (no significant degradation of dune habitats and/or vegetation; use to be kept to the minimum amount necessary to abate dust).

    b. **Monitoring Measures.** Air quality monitoring stations consistent with APCD and/or CARB requirements that are sited and designed to limit any associated coastal resource impacts as much as possible.

    c. **Dust Control and Monitoring Area.** Approved dust control and monitoring measures are to be located in the areas specified (by APCD and/or CARB) as necessary to meet APCD and/or CARB requirements, subject to concurrence by the Executive Director. In addition, track out devices are to be located at Pier and West Grand Avenues, but shall only be allowed within the existing paved street areas and shall not be allowed on the beach sand. Further, native trees shall only be planted where the Permittee has provided property owner consent for same, and where the Executive Director determines that the proposed native trees will be planted in an amount, configuration, and species type that will not have significant adverse effects on coastal resources (no obstruction of any public coastal views; no significant degradation of dune vegetation and habitat; no loss of prime agricultural lands or lands used for agricultural production).

    d. **Dust Control Measures Coverage.** Dust control measures approved pursuant to this CDP are expected to result in planting/maintaining approximately 350 acres. Authority for State Parks to implement the approved dust control and related monitoring measures at any given location is subject to the requirement that State Parks has landowner approval to undertake development on that property.

**e. APCD and CARB Requirements.** Notwithstanding subsections (a) through (d) above, any dust control measures implemented under this CDP shall be consistent with any applicable requirements of APCD and CARB related to dust control at ODSVRA.

Prior to implementing any of the approved dust control and monitoring measures, the Permittee shall submit, for Executive Director review and approval, a Dust Control Work Plan that clearly describes the dust control and monitoring measures to be implemented, where the Dust Control Work Plan shall be submitted with evidence that APCD and CARB have reviewed the measures and consider them consistent with their requirements related to dust control at ODSVRA. Each Dust Control Work Plan submitted by the Permittee shall include a description of the previous dust control and monitoring measures undertaken, including monitoring data identifying effectiveness, including the effectiveness and success of dune revegetation, and any coastal resource impacts. The Executive Director shall review each Dust Control Work Plan to ensure consistency with the terms and conditions of this CDP, including with respect to the protection of coastal resources. The Permittee shall immediately implement the Dust Control Work Plan upon Executive Director approval.

14. **Indemnification by State Parks/Liability for Costs and Attorneys' Fees.** 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 of these CDP changes. The Coastal Commission retains complete authority to conduct and direct the Commission's defense of any such action against the Coastal Commission, its officers, employees, agents, successors and assigns.

15. **Special Condition Conflicts.** In case of any conflict between these special conditions (i.e., Special Conditions 1 through 15 as approved by the Coastal Commission on July 11, 2019) and other CDP 4-82-300 special conditions (see Exhibit 4), these special conditions (Special Conditions 1 through 15) shall take precedence.

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**August 5, 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:

I write today to clarify one item in my letter to you dated July 23, 2019 wherein I identified the parameters of the action taken by the California Coastal Commission on July 11, 2019 in relation to CDP 4-82-300 regarding the Oceano Dunes State Vehicular Recreation Area (ODSVRA). Specifically, in that July 23rd letter I indicated that, among other things, the Commission took an action "Requiring State Parks to incorporate all of staff's recommended operational and other short-term changes in the staff report (see "Staff-Recommended Additional CDP Special Conditions" attachment) as permanent conditions through the PWP". Upon further review of the hearing record, I would like to clarify that aspect of the action, and to replace it with the following: "Requiring State Parks to address all of staff's recommended operational and other short-term changes in the staff report (see "Staff-Recommended Additional CDP Special Conditions" attachment) as permanent conditions within the PWP process".

To be clear, review of the hearing record indicates that the very strong intent of the Commission, including through the separate July 12, 2019 letter under the Chair's signature summarizing the Commission's direction to State Parks regarding the changes that the Commission believes are necessary at ODSVRA to ensure Coastal Act consistency (including with respect to State Parks' proposed Public Works Plan (PWP)), was for State Parks to seriously address each of the staff report's recommended operational and other short-term changes in the PWP currently being developed. Further, it is also clear that the strong intent of the Commission was for State Parks to take seriously both the Commission's articulated direction in the Commission's letter *and* the staff report-recommended changes, and to ensure that *both* of these are reflected in upcoming PWP products and efforts, including ultimately through a PWP submittal for Commission consideration by summer of 2020.

I hope that that helps to clarify that aspect of the Commission's July 11, 2019 action. We look forward to working with you and your staff over the next year, and beyond, to help bring about needed change at ODSVRA to ensure consistency with the Coastal Act. If you have any questions, please don't hesitate to contact me.

Sincerely,

JOHN AINSWORTH
Executive Director
California Coastal Commission

Docusign Envelope ID: 9EFD **A2 California Department of Fish and Wildlife (CDFW)**

State of California – Natural Resources Agency
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***GAVIN NEWSOM, Governor***
***MEGHAN HERTEL, Director***

January 30, 2026

Ronnie Glick, Senior Environmental Scientist
California Department of Parks and Recreation
OHMVR Division, Oceano Dunes District
Oceano Dunes District
340 James Way, Suite 270
Pismo Beach, California 93449
**Ronnie.Glick@parks.ca.gov**
(209) 385-7654 ext. 4407

**Subject: Oceano Dunes District Habitat Conservation Plan (HCP)**
**Recirculated Draft Environmental Impact Report (RDEIR)**
**State Clearinghouse No.: 2018011012**

Dear Ronnie Glick:

The California Department of Fish and Wildlife (CDFW) received an RDEIR from the California Department of Parks and Recreation (CDPR), as Lead Agency, for the above-referenced revised HCP pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the HCP that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the HCP that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

**CDFW ROLE**

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (Id., § 1802.). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public

[1] CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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agency environmental review efforts, focusing specifically on the HCP covered activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, certain HCP covered activities may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of HCP covered activities may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

**Fully Protected Species**: CDFW has jurisdiction over fully protected species of birds, mammals, amphibians and reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. Fully protected species may not be taken or possessed at any time and no licenses or permits may be issued for their take except as follows:

- Take is for necessary scientific research,
- Efforts to recover a fully protected, endangered, or threatened species, live capture, and relocation of a bird species for the protection of livestock, or
- They are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515).

**Nesting Birds:** CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include, sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

**Unlisted Species:** Species of plants and animals need not be officially listed as Endangered, Rare, or Threatened (E, R, or T) on any State or Federal list to be considered E, R, or T under CEQA. If a species can be shown to meet the criteria for E, R, or T, as specified in the CEQA Guidelines section 15380, CDFW recommends it be fully considered in the environmental analysis for the HCP.

## HABITAT CONSERVATION PLAN SUMMARY

**Proponent:** California Department of Parks and Recreation

**Objective:** CDPR has prepared a revised HCP to support its application for a federal incidental take permit (ITP) under the federal Endangered Species Act (ESA) for the Pismo State Beach (PSB) and Oceano Dunes State Vehicular Recreation Area

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(ODSVRA); park units which are managed by the Oceano Dunes District. The revised HCP covers 5,005 acres and will allow DPR to operate Oceano Dunes SVRA and Pismo SB in a manner that benefits numerous sensitive species while ensuring consistency with the ESA. The ITP would cover all lawful activities for which CDPR has responsibility within the HCP area that could result in take of covered species, including public use, recreation management, natural and cultural resources management, and park/beach management.

**Location:** The HCP area includes 5,005 acres of PSB and ODSVRA. The HCP area is bounded by the City of Pismo Beach to the north, the Guadalupe-Nipomo Dunes National Wildlife Refuge to the south, urban and agricultural land to the east and the Pacific Ocean to the west. Primary access to the HCP area is via U.S. Highway 101 and State Route 1.

## COMMENTS AND RECOMMENDATIONS

The revised HCP and RDEIR were prepared to support a USFWS ITP for the State endangered and fully protected and federally endangered California least tern (*Sternula antillarum browni*); the State species of special concern and federally threatened western snowy plover (*Anarhynchus nivosus nivosus*); the State species of special concern and federally proposed threatened southwestern pond turtle (*Actinemys pallida*); the State species of special concern and federally threatened California red-legged frog (*Rana draytonii*); the State species of special concern and federally proposed threatened western spadefoot (*Spea hamondii*); and the State species of special concern and federally endangered tidewater goby (*Eucyclogobius newberryi*). The revised HCP and RDEIR also evaluated impacts and provided measures to avoid and minimize take for listed plant species, including the State threatened beach spectaclepod (*Dithyrea maritima*); the State threatened and federally endangered Gambel's watercress (*Nasturtium gambelii*) and La Graciosa thistle (*Circsium scariosum* var. *loncholepis*); the State and federally endangered marsh sandwort *(Arenaria paludicola*) and Nipomo mesa lupine (*Lupinus nipomensis*); and the State threatened surf thistle (*Cirsium rhothophilum*).

CDFW submitted a comment letter on June 1, 2020 (Attachment 1) in response to the publication of the initial draft HCP and Draf Environmental Impact Report (DEIR). That letter included comments and recommendations for activities and measures identified in the draft HCP and DEIR to identify and mitigate the HCP's significant or potentially significant direct and indirect impacts on biological resources. Attachment 1 included comments pertaining to the removal of seasonal fencing, mechanical trash removal, capture and captive rearing of western snowy plover chicks and eggs, special status plant species, and the use of unmanned aircraft systems (UASs).

As noted in the revised HCP and RDEIR, CDPR is in the preliminary stages of pursuing a Natural Community Conservation Plan (NCCP) with CDFW to comply with CESA and Fish and Game Code and authorize the incidental take of State-listed species as part of

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the continued management of the PSB and ODSVRA. CDFW has also been collaborating on a Biodiversity Management Plan (BMP; CDFW 2021) with CDPR to assist with implementing measures to avoid and minimize impacts to sensitive biological resources while the NCCP is being developed. While several of CDFW's comments and recommendations were addressed within the revised HCP and BMP (CDFW 2021), CDFW has the following comments and recommendations for consideration.

**Removal of Seasonal Fencing**

As discussed in Attachment 1, the removal of seasonal fencing east around the Boneyard Exclosure and the 6 Exclosure would reduce the amount of available protected habitat for western snowy plover (SNPL) and California least tern (CLTE) nesting. The reduction of available nesting habitat and increased disturbance from revised HCP activities occurring within and adjacent to these areas may also cause SNPL, CLTE and other migratory bird species to discontinue their use of these areas and the HCP area in general. Additionally, the revised HCP avoidance and minimization measures including a slow reduction of the 6 Exclosure, a reinstatement of the 6 Exclosure if the updated SNPL breeding population metric is not met, and creating single nest exclosures for SNPL that nest outside of protected areas will not replace nor offset the removal of permanently protected nesting and foraging habitat nor meet the requirements to avoid impacts to a fully protected species. As such, CDFW continues to recommend that CDPR acquire take authorization through the completion and approval of the NCCP and that CDPR restrict all activities that could potentially result in take of any fully protected species, including removing the fencing around the Boneyard and 6 Exclosure, until a NCCP has been approved by CDFW and take authorization pursuant to Fish and Game Code section 2835 has been obtained from CDFW. CDFW also recommends that CDPR continue collaborating on the BMP (CDFW 2021) and implementing the measures outlined in the BMP (CDFW 2021) to avoid and minimize impacts to sensitive biological resources while the NCCP is being developed. A2-1

**Night Vehicle Use**

The revised HCP allows for unrestricted access for both street legal and off highway vehicle use within the HCP area and acknowledges that night vehicle use can have impacts (e.g., vehicle strikes that cause injury or mortality) on SNPL and CLTE. As the Draft HCP and DEIR presumed that night vehicle use impacts would be uncommon and insignificant, this was based on a past impact study with noted shortcomings. Thus, CDFW has recommended that a peer reviewed, multi-year academic study be conducted and funded by CDPR. CDPR agreed to conduct and fund a new multi-year study (hereafter, Night Riding Study) as part of the BMP (CDFW 2021) and collaboration with CDFW on the Night Riding Study is ongoing. In the event that the Night Riding Study demonstrates that night OHV activities result in any of the following: 1) statistically significant reductions to avian spatial and/or temporal use patterns; 2) statistically significant reductions to nesting and/or nesting success; 3) statistically significant reductions in foraging times or areas; or 4) statistically significant reductions A2-2

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to overall individual numbers of special status avian species, CDFW recommends that highway vehicle access along the foredunes and surf zone south of Post 4.5 be restricted after sunset until a NCCP has been approved by CDFW and take authorization pursuant to Fish and Game Code section 2835 has been obtained from CDFW. A2-2

**Capture and Captive Rearing of Western Snowy Plover Chicks and Eggs**

The revised HCP proposes to allow the increased capture and captive rearing of up to 12 SNPL chicks and/or 12 SNPL eggs per year if the chicks and/or eggs cannot be reunited with the adult or are at risk of harm from covered activities. As outlined in Attachment 1, the capture and captive rearing of SNPL chicks and eggs is considered take under Fish and Game code and would require appropriate permits from CDFW before commencement of these activities. Additionally, the revised HCP includes directing SNPL chicks from the open riding area back into exclosures. These measures would also be considered “pursuit” and therefore “take” under Fish and Game Code section 86. A2-3

**Special Status Plant Species**

The revised HCP and RDEIR acknowledge that several special status plant species, including the Stated listed plant species mentioned above, would be impacted by operations and maintenance activities including but not limited to mechanical trash removal, fence installation and removal, and newly proposed activities. The revised HCP notes that the take of listed plants are not prohibited under the ESA and provides impact amounts and avoidance and minimization measures, including the incorporation of preconstruction surveys to identify and mitigate impacts to special-status plant species. As noted above and in Attachment 1, any impacts to State listed plant species without appropriate take authorization would be a violation of CESA and CDFW continues to recommend that CDPR either fully avoid take of State-listed plants or acquire appropriate take authorization. As outlined in the BMP (CDFW 2021), with the ongoing management activities by CDPR, CDFW recommends this take authorization occur through the completion and approval of a NCCP and that CDPR restrict all activities that could potentially result in take of any State-listed plant species until a NCCP has been approved by CDFW and take authorization pursuant to Fish and Game Code section 2835 has been obtained. Alternatively, or in the meantime, project specific take authority for CESA listed species could be acquired by CDPR through a State incidental Take Permit pursuant to Fish and Game Code Section 2081(b). CDFW also recommends that CDPR continue collaborating with CDFW on BMP implementation (CDFW 2021), including plant specific avoidance measures outlined to avoid impacts to State-listed plants while the NCCP is being developed. A2-4

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***Evaluation of Impacts to State Listed Plant Species***

The revised HCP and RDEIR currently include an evaluation of impacts to State-listed Plant species as group, rather than having a robust analysis of impacts to each of the covered State listed plant species individually. The RDEIR in particular includes a general analysis of impacts to the covered State listed plant species noted above. As these covered activity impact analyses do not focus on individual species and their habitats, it is difficult to ascertain which covered activities may impact which species. It is also difficult to ascertain whether the RDEIR adequately assessed each species bloom period, habitat requirements, potential for occurrence, and potential for covered activity related impacts as part of the impact analysis. As such, CDFW recommends that state-listed plant species be addressed individually rather than combined under a single generic plant section. **A2-5**

***Special Status Plant Surveys***

In addition to this general recommendation, and until appropriate State take authorization has been obtained, CDFW recommends that all areas with potentially suitable habitat be surveyed for special-status plants by a qualified botanist following the “Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities” (CDFW 2018) prior to initiating any activities that could result in disturbance to the habitat. This protocol, which is intended to maximize detectability, includes identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. In the absence of protocol-level surveys being performed, additional surveys may be necessary. CDFW also recommends these surveys incorporate an appropriate buffer (e.g., 500 meters) around suitable habitat to look for new individuals that may germinate from the seed bank on the periphery of an occurrence. CDFW also recommends that this survey buffer be incorporated as part of the applicable avoidance and minimization measures identified within the revised HCP to further avoid and minimize impacts to special status plant species, including State-listed species. **A2-6**

CDFW also advises special-status plant species be avoided by implementing a minimum 50-foot no-disturbance buffer around the outer edge of plant population(s) or specific habitat type(s) that support special-status plant species. CDFW recommends the 50-foot no-disturbance buffer include indirect impacts such as excessive dust, sedimentation, excessive runoff, or other disturbances that may not result from direct ground-disturbance but could also impact habitat quality habitat. If buffers cannot be maintained, then consultation with CDFW is warranted to determine appropriate minimization and mitigation measures for impacts to special-status plant species, or in the case of plant species listed pursuant to CESA or the Native Plant Protection Act, to determine if take can be avoided.

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As stated above, if State-listed plant species are identified during botanical surveys, consultation with CDFW is warranted to determine if the activity can avoid take. If take cannot be avoided, take authorization prior to any ground-disturbing activities would be warranted. Take authorization would occur through issuance of an ITP by CDFW, pursuant to Fish and Game Code section 2081(b) or through the approval of a NCCP pursuant to Fish and Game Code section 2800 *et seq*. A2-6

***Special-Status Plant Avoidance and Minimization Measures***

Currently, the revised HCP includes avoidance and minimization measures for special status plant species during implementation of the Habitat Restoration Project (Covered Activity 16) within the HCP area. These measures include survey, avoidance, and salvage/relocation requirements; however, these measures are not specific to the blooming periods, habitat requirements, and relocation/salvage approaches of the covered plant species identified in the revised HCP. In addition to the comments above that CDPR avoid impacts to State-listed plant species until appropriate take authorization is obtained, CDFW recommends that the special-status plant avoidance and minimizations measures outlined for Covered Activity 16 (CA-16) be modified to be specific to each plant species identified in the revised HCP. CDFW is available to assist CDPR with incorporating these species-specific AMMs. A2-7

***CA-16, CA-21, and CA-50 Plant Impacts***

Covered activities CA-16, CA-21, and CA-50 have a strong potential to significantly impact special-status plants and their seed banks. Importantly, these covered activities are unlikely to truly be temporary in nature as soil disruption can have long-term and unpredictable impacts on seed banks and plant populations. Mechanical trash removal for instance, has the potential to crush or destroy special-status species, including state-listed surf thistle and beach spectaclepod. CDFW recommends that the RDEIR acknowledge that seed banks may be vulnerable to proposed activities and soil disturbance within 500 meters of areas currently or historically occupied by CESA-listed plants should be considered for surveys outlined above. CDFW also recommends conducting thorough surveys within enclosures for CA-50 to ensure accurate disclosure of potential impacts, and exploring restriction on covered activity timing to reduce impacts for covered activities. A2-8

**Fully Protected Species**

CDFW has jurisdiction over fully protected species of birds, mammals, amphibians, reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. Take of any fully protected species is *prohibited*, and CDFW cannot authorize their take in association with CDPR's ongoing management activities except under the provisions of a NCCP, 2081.7 or a Memorandum of Understanding for scientific A2-9

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purposes. The HCP area is not currently within an approved NCCP area; 2081.7 does not apply to the development projects outlined in the HCP, and a development project is not considered a scientific purpose. The fully protected CLTE and white-tailed kite (*Elanus leucurus*; WTKI) are known to occur, nest, and forage within the revised HCP area. This status, and the absence of a NCCP, precludes CDFW from authorizing ***any*** amount of incidental take for fully protected species.

As noted above, CDPR is in the preliminary stages of pursuing a NCCP with CDFW to comply with CESA and has been collaborating on the CDFW and CDPR-approved BMP (CDFW 2021) to assist with implementing measures to avoid and minimize impacts to sensitive biological resources while the NCCP is being developed. As outlined in the BMP (CDFW 2021), CDPR agreed to implement a 300-meter buffer zone around CLTE nests. The revised HCP includes avoidance and minimization measures which requires implementation of a 100-meter buffer around CLTE nests. The revised HCP further clarifies that the 300-meter buffer has previously been implemented as outlined in the BMP (CDFW 2021); however, CDPR concludes the reduced buffer distance within the revised HCP should be sufficiently effective to minimize disturbance. As previously noted in Attachment 1 and agreed upon by CDFW and CDPR in the BMP (CDFW 2021), CDFW strongly recommends that a 300-meter buffer be implemented around CLTE nests in the main exclosure at ODSVRA while take is prohibited (e.g. with no NCCP in place) and in developing the adaptive management measures needed for a NCCP. A2-9

**Stream Fisheries**

As noted in Attachment 1, the revised HCP area supports two special status freshwater fish species, the State species of special concern and federally threatened steelhead (*Oncorhynchus mykiss irideus*), South-Central California Coast Distinct Population Segment, and tidewater goby. Both species inhabit Arroyo Grande Creek and/or the Arroyo Grande Creek lagoon during their freshwater life stages, and Arroyo Grande Creek has been identified by the National Oceanic and Atmospheric Administration (NOAA) and the National Marine Fisheries Service (NMFS) as critical habitat for the recovery of South-Central steelhead. While both steelhead and tidewater goby primarily inhabit portions of Arroyo Grande Creek within and upstream of the lagoon, a contiguous undisturbed stream from the ocean to the lagoon is important for steelhead (adults and juveniles) and tidewater goby immigration and emigration. However, vehicle access to the camping and off highway vehicle riding areas in the revised HCP can currently only occur from either the Grand Avenue or Pier Avenue Ramps. These two ramps are located north of Arroyo Grande Creek, and the ODSVRA is south of Arroyo Grande Creek. These two access points require that vehicles cross Arroyo Grande Creek when it is flowing, which generally occurs during the winter and spring seasons. When the lagoon mouth is typically closed (summer/fall), vehicles traverse the same path but do not contact the stream/lagoon environment since the steam is no longer flowing across the beach, although it should be noted that the lagoon and closed estuary are well known to be important rearing habitat for steelhead and tidewater goby

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and there could still be a risk to these species from recreation. It is noteworthy that in wet years, the creek can run across the sand year-round. The area of stream vehicle crossing, while the stream is flowing, is characterized as sandy beach, adjacent to the Pacific Ocean, varying in width from approximately 50 feet to several hundred feet wide, depending on tidal conditions. In this location, also referred to as the creek mouth, stream conditions also vary depending on stream flow, which can vary from several thousand cubic feet per second during high flow periods in the winter and spring, to no outflow to the ocean during the summer and fall.

***NOAA Fisheries 2008 Letter***

The revised HCP and RDEIR note that steelhead is not a covered species within the revised HCP as NOAA Fisheries previously concluded that the existing covered activities are not likely to result in the take of steelhead with the implementation of the avoidance and minimization measures outlined by CDPR (NOAA Fisheries 2008). The RDEIR also notes that, as covered activities are not expected to impact steelhead, the species is not considered further in the analysis.

The NOAA Fisheries (2008) letter states that, "Motorized vehicles are expected to encroach into steelhead-bearing creeks. Of the coastal units considered here, only Arroyo Grande Creek experiences vehicular crossings. Vehicles cross the creek during periods of low flow when steelhead are not expected to be emigrating or immigrating. Although possible, we do not believe it probable that steelhead would come into direct contact with vehicles crossing the creek." The NOAA Fisheries (2008) letter also states: "Please be advised that the above conclusions do not provide an exemption from take liability under Section 9 of the U. S. Endangered Species Act." While NOAA Fisheries concluded that the existing covered activities are not anticipated to result in take, the letter acknowledges the potential for steelhead to come into contact with a vehicle. Additionally, the letter does not discuss the potential for indirect impacts to steelhead and assumes that steelhead do not migrate during low flows. CDFW does not concur with NOAA fisheries overall conclusions as CDFW staff have documented juvenile steelhead migration occurring as early as October through as late as June on the descending limb of the hydrograph and under winter base flow conditions within San Luis Obispo Creek. Essentially, CDFW has confirmed, through the use of Passive Integrated Transponder (PIT) tag detection data, that steelhead migration is documented to occur at relatively low flows. This conclusion is further supported in literature, with CDFW's Standard Operating Procedure for Critical Riffle Analysis for Fish Passage in California (2017) document noting that adult steelhead can migrate at depths of 0.7-feet and smolts at 0.4-feet. Based on this information, it is likely that vehicular crossings of Arroyo Grande Creek do occur when steelhead are expected to be migrating and that vehicular crossings could impact steelhead migration.

**A2-10**

As discussed above, CDFW does not concur that steelhead take is unlikely with the current revised HCP avoidance and minimization measures. In addition to CDFW’s

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knowledge of steelhead migration in this area, CDPR's current steelhead survey approach, which incorporates seining surveys in shallow, wadable waters, and which does not allow for an estimation of population size, is likely insufficient to accurately detect steelhead presence and population trend information. Further, direct steelhead take via vehicle crossings would be extremely difficult to detect and would likely be undetectable through CDPR's current monitoring efforts.

There are, at times, thousands of vehicular crossings daily at Arroyo Grande Creek during the migratory season (generally December - June), and these crossings are likely to interrupt both migration and potential take steelhead individuals. There is evidence of steelhead take, as documented by CDPR staff, in recent years at the Arroyo Grande Creek mouth (March, 2012; January 28, 2021; March 26, 2024; March 5, 2025), although the cause of death was determined to be unknown given the circumstances around detection. Finally, in addition to direct vehicle strikes on steelhead and tidewater goby, indirect effects from vehicle noise, physical disturbance within the stream, potential water pollution and light pollution (at night) from vehicles, are all likely to impact steelhead movement and migration. To partially address these concerns, the BMP (CDFW 2021) includes measures to further avoid and minimize impacts to both steelhead tidewater goby. A2-10

***Biodiversity Management Plan for Steelhead and Tidewater Goby***

As outlined in the BMP (CDFW 2021), and partially specified in several avoidance and minimization measures for tidewater goby in the revised HCP, CDPR committed to implementing the following measures to avoid and minimize impacts to steelhead and tidewater goby:

1. Closure of the Arroyo Grande Creek crossing to vehicles based on a hydrologic trigger (with a public health and safety exception). Currently the closure would trigger at a depth of 12 inches, pending further protective measures like installation of a crossing structure and further fisheries study.

2. Commitment to evaluating a potential mobile stream crossing structure for Arroyo Grande Creek as soon as possible to reduce vehicle impacts contingent on completion of a feasibility study analyzing costs, design, and operational considerations. However, CDFW is aware that a feasibility study has since been conducted and it determined a crossing structure infeasible due to the necessary bridge length and number of spans. As such, a crossing structure was removed from consideration. A2-11

3. Increased use of technology for outreach on stream crossing through design and utilization of the CPS reservation e-system. This increased outreach can facilitate greater advance notice to campers and recreationalists when a depth-criteria will trigger a prohibition on vehicles crossing the stream.

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4. Develop and implement a study to gather site specific information and foster adaptive management concerning these measures and long-term impacts of vehicle crossings on the stream and species.

The BMP (CDFW 2021) also notes that these measures should be re-evaluated in conjunction with the possible construction of a third access point at the southern end of the HCP area. A2-11

While CDFW acknowledges that CDPR has committed to incorporating the measures within the BMP (CDFW 2021), and is implementing portions of the BMP (CDFW 2021) pertaining to steelhead and tidewater goby, CDFW recommends the following measures to re-evaluate and modify what was originally recommended given the infeasibility of a crossing structure and subsequent information gathered by CDFW:

***Implementation of CDFW Tool to Avoid Steelhead and Tidewater Goby Take***

CDFW recommends that CDPR update the Arroyo Grande Creek crossing closure criteria from the current water depth threshold of 12 inches. CDFW recently updated the creek crossing closure analyses and recommends that CDPR use the tool outlined in the 2025 CDFW memorandum (Attachment 2) shared with CDPR to determine when to close vehicle crossing at Arroyo Grande Creek. This tool was developed using topographic, stream stage/discharge, and tidal stage data to inform when conditions are particularly conducive to steelhead migration and includes depth criteria for steelhead which is consistent with CDFW's Standard Operating Procedure for Critical Riffle Analysis for Fish Passage in California (CDFW 2017). This tool would allow for greater accuracy and consistency and would reduce vehicle impacts to steelhead and tidewater goby and is consistent with the recommendations outlined above. Additionally, this tool has the added benefit of informing when hydrological conditions at the vehicular crossing may present a public safety concern and does not require State Parks staff to conduct physical depth measurements at the vehicle crossing. CDFW also recommends that CDPR coordinate with CDFW Central Region Fisheries staff for implementation of this tool and that this same approach be utilized to determine when to implement vehicle crossing closures for Pismo and Oso Flaco Creeks. A2-12

***Notification of Steelhead and Tidewater Goby Take***

CDFW recommends that the revised HCP and RDEIR include measures that necessitate routine water quality monitoring of the Arroyo Grande Creek crossing and lagoon immediately during and/or after steelhead and tidewater goby fish kills. Collection of water quality (and fish) data is essential for helping to determine the potential cause of fish kills. A2-13

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***Arroyo Grande Creek Camera Monitoring***

The revised HCP and RDEIR notes that Arroyo Grande Creek can only be crossed using street-legal vehicles and such vehicles are prohibited from crossing Arroyo Grande Creek in any manner other than by crossing the creek as close to the ocean waterline as possible and parallel to the ocean waterline. Driving upstream or downstream in the creek channel or in any other manner in the creek channel is prohibited, and a closure would be implemented if water depth exceeds 12 inches as measured closest to the water line. Additionally, CDPR is currently working to gain a better understanding of Arroyo Grande Creek vehicle use and associated impacts to fish migration and outmigration as part of the ongoing studies identified in the BMP (CDFW 2021). These studies are being conducted in collaboration with CDFW. CDFW has provided CDPR with updated Arroyo Grande Creek closure recommendations; continuing to rely upon the interim 12-inch depth criteria identified in the BMP (CDFW 2021) is likely insufficient to prevent impacts to steelhead from vehicular crossings, particularly given that installation/construction of a stream crossing structure has been deemed infeasible by CDPR. Further, current reporting/data collection efforts of the crossing depth and related potential steelhead and tidewater goby take are insufficient to inform management actions. As such, CDFW recommends that CDPR install a camera at the mouth of Arroyo Grande Creek to quantify the number of vehicular crossing each day during the steelhead migratory season (generally, December through June). CDFW is available to assist with camera placement efforts. **A2-14**

***Fisheries Monitoring***

The revised HCP and RDEIR note that fisheries surveys have been ongoing within Arroyo Grande Creek and estuary since 2003 and the primary purpose is to document native fish populations in the HCP area. In addition, these surveys are intended to gather information about various species' use of the habitats within the HCP area, evaluate whether covered activities may be impacting fisheries and aquatic habitat, and document the impacts of habitat disturbance caused by upstream water management activities. The revised HCP notes that seining would include approximately 10 to 15 seine hauls among the various waters surveyed and the seine would typically be swept in an arc, with a set pivot point on shore, or dragged across or longitudinally along pool areas that are accessible and unimpeded by vegetation or debris. CDFW is concerned that the current fisheries monitoring excludes areas of lagoons that are unwadable; which limits the surveyed area to areas less than approximately 5 feet deep and thus may be missing habitat that is most likely to contain steelhead. It should be noted that previous surveys are likely not sufficient to support a determination of absence of steelhead in Arroyo Grande and Pismo Creek lagoons. Additionally, CDPR's fish monitoring surveys provide qualitative data on species presence, but do not provide quantitative data on fish populations, making it difficult to infer any population changes over time. **A2-15**

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As such, CDFW recommends that surveys implement seining techniques that are designed to capture the breadth of fish species present (including steelhead) and are able to detect changes in population size. CDFW recommends surveys utilize a taller/longer seine than is currently used and hauling the deep end of the seine with a jon boat or canoe to adequately sample deep areas of the lagoon that are unwadable, as this habitat may be more likely to hold steelhead. Regarding study design, CDFW recommends using a mark-recapture design such as that described in Frechette et al. (2016). Additionally, with properly experienced and trained biologists that have appropriate State and federal permits, CDPR could implant steelhead with Passive Integrated Transponder (PIT) tags during these surveys, and PIT antennae could be operated to assess steelhead movement in and out of the Arroyo Grande Creek lagoon. A DIDSON Sonar camera or weir/trap installed upstream of the lagoon could provide insights into adult steelhead population status, trend, and migration timing. Lagoon surveys should also include a water quality monitoring component -- routine water quality profiles of salinity, temperature, and dissolved oxygen (taken every 0.25 meter across the water column), along with a Secchi depth reading (to assess water clarity) to monitor/assess the lagoons' suitability for steelhead (and other aquatic species). CDFW also recommends that seine surveys for steelhead be conducted separately from tidewater goby surveys, as differences in these species biology and ecology may dictate the use of different seine sizes, sampling locations, and study designs.

A2-15

***Steelhead and Tidewater Goby Lagoon Restoration***

CDFW is aware of ongoing discussions between CDFW and San Luis Obispo County regarding restoration within the Arroyo Grande Creek lagoon. For future steelhead and tidewater goby restoration work, CDFW recommends against utilizing a simplistic restoration approach that is solely focused on increasing hydrological connectivity and circulation between water bodies of the lagoon complex within the HPC area. This type of simplistic restoration approach resulted in decades of annual fish kills (and severe reduction of California red-legged frog) at Pescadero State Beach in San Mateo County due to toxic salinity levels within the lagoons (Smith and Reis 1997, Sloan 2006, Smith 2009). Instead, CDFW recommends that restoration goals maximize habitat for steelhead and tidewater goby and focus on restoration methods that provide sufficient depth; transition habitat that facilitates salinity stratification during the migration period; healthy water quality that contains salinity destratification during the summer and fall, sufficient dissolved oxygen, and appropriate temperatures in 0.25-meter increments in the water column and secchi depth; and hydrologic connection between Arroyo Grande Creek during the annual steelhead migration period (December 1 through June 15). CDFW also recommends that CDPR and San Luis Obispo County staff coordinate with CDFW fisheries staff during the development and implementation of lagoon restoration work within the HCP area.

A2-16

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**Crotch's Bumble Bee**

As of September 30, 2022, CBB is a candidate species under CESA and as such, receives the same legal protection afforded to an endangered or threatened species (Fish & G. Code, §§ 2074.2 & 2085). It is illegal to import, export, take (hunt, pursue, catch, capture, or kill, or attempt engage in any of these activities), possess, purchase, or sell CBB or any part or product thereof (Fish & G. Code, §§§ 86, 2080, 2085).

The HCP area is within the geographic range of Crotch's bumble bee (CBB) and portions of the site contains habitat that may support CBB. CBB are known to inhabit areas of grasslands, scrub, and riparian, that contain requisite habitat elements for nesting, such as small mammal burrows and bunch/thatched grasses, and these habitat elements may be present within the HCP Area.

Currently, the revised HCP and RDEIR do not contain evaluation of CBB, and avoidance and no mitigation measures are proposed. As such, CDFW recommends that CDPR incorporate the following measures prior to initiating any development activities in any areas where CBB may occur:

***CBB Habitat Assessments***

CDFW recommends a qualified biologist conduct a habitat assessment to determine if the development area and the immediate surrounding vicinity contain habitat suitable to support CBB. Potential nesting sites, which include all small mammal burrows, perennial bunch grasses, thatched annual grasses, brush piles, old bird nests, dead trees, and hollow logs would need to be documented as part of the assessment. A2-17

***CBB Surveys***

If potentially suitable habitat is identified, CDFW recommends that a qualified biologist conduct focused surveys for CBB, and their requisite habitat features following the methodology outlined in the Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (CDFW 2023).

***CBB Avoidance and Consultation***

If CBB is detected, then CDFW recommends that all small mammal burrows and thatched/bunch grasses be avoided by a minimum of 50 feet to avoid take and potentially significant impacts. If ground-disturbing activities will occur during the overwintering period (October through February), consultation with CDFW is warranted to discuss how to implement covered activities and avoid take. Any detection of CBB prior to or during covered activities warrants consultation with CDFW to discuss how to avoid take. If project specific take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA, until an NCCP has

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been approved by CDFW and take authorization pursuant to Fish and Game Code section 2835 has been obtained from CDFW. A2-17

**The Use of UAS:** The RDEIR and revised HCP proposes to allow drones and other unmanned aircraft in the HCP area to reduce the time and cost of data collection and notes that, "Currently, CDPR does not have authorization to fly UAS during the nesting season and over known nesting areas. CDPR proposes approving the potential use of UAS during both the nesting and non-nesting periods and over occupied areas (nesting and roosting areas) for data collection purposes as needed to meet the monitoring or management objectives. All UAS activity would be implemented in a way that minimizes impacts to nesting or roosting SNPL and CLTE. The 2021 Biodiversity Management Plan places limits on use of UAS during the nesting season; however, the Biodiversity Management Plan is an interim step until the completion of a NCCP." As highlighted in the RDEIR and agreed to by CDPR in the BMP (CDFW 2021), CDFW recommends that CDPR restrict UAS flights during the nesting season in known nesting areas until the NCCP has been approved by CDFW and take authorization pursuant to Fish and Game Code section 2835 has been obtained from CDFW. A2-18

**ENVIRONMENTAL DATA**

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database, which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special-status species and natural communities detected during surveys to the California Natural Diversity Database (CNDDB). The CNDDB field survey form can be filled out and submitted online at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Submitting-Data. The types of information reported to the CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Plants-and-Animals. A2-19

**FILING FEES**

Covered activities outlined in the HCP, as proposed, would have an impact on fish and/or wildlife, and an assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089). A2-20

**CONCLUSION**

CDFW appreciates the opportunity to comment on the RDEIR and revised HCP to assist CDPR in identifying and mitigating the HCP's impacts on biological resources. CDFW recommends that CDPR continue to coordinate with CDFW to obtain a NCCP and that CDPR restrict all activities that could potentially result in take of any fully protected species until a NCCP has been approved by CDFW and take authorization A2-21

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pursuant to Fish and Game Code section 2835 has been obtained from CDFW. In the approval of a NCCP and the authorization of the taking of species listed in the NCCP, including but not limited to CLTE and SNPL, the requirements for the approval of the NCCP must be met in accordance with Fish and Game Code sections 2820 and 2821. This includes the integration of specific conservation measures to meet the biological needs of species, protection of habitat through the creation and permanent protection of habitat reserves, and funding for perpetual adaptive management. It is important to note that additional minimization and mitigation measures for several species beyond those included in the RDEIR and revised HCP would likely be required for approval of an NCCP that includes those species. Further, CDFW recommends that CDPR initiate standing NCCP meetings with CDFW to substantially aid progress in working towards acquisition of an NCCP. **A2-21**

A Mitigation and Monitoring Program (MMRP) (Attachment 3) is included to assist CDPR with incorporating the recommended mitigation measures provided above. If you have any questions regarding this letter or further coordination, please contact Evelyn Barajas-Perez, Environmental Scientist, at the address provided on this letterhead, by telephone at (805) 503-5738 or evelyn.barajas-perez@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Julie Vance
FA83F09FE08945A...

Julie A. Vance
Regional Manager

Attachments

Attachment 1 - CDFW June 2020 Letter
Attachment 2 - 2025 CDFW Memorandum
Attachment 3 - MMRP

ec: State Clearinghouse
Land Use and Climate Innovation
State.Clearinghouse@lci.ca.gov

U.S. Fish and Wildlife Service
Catherine Darst
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***GAVIN NEWSOM, Governor***
***CHARLTON H. BONHAM, Director***

June 1, 2020

Ronnie Glick
Senior Environmental Scientist
California Department of Parks and Recreation
Off-Highway Motor Vehicle Recreation
Oceano Dunes District
340 James Way, Suite 270
Pismo Beach, California 93449
OceanoDunesHCP@parks.ca.gov

**Subject: California Department of Parks and Recreation Oceano Dunes District Habitat Conservation Plan (HCP) and Draft Environmental Impact Report (DEIR) (Project), SCH No. 2018011012**

Dear Mr. Glick:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a DEIR from the California Department of Parks and Recreation (CDPR) Off-Highway Motor Vehicle Recreation (OHMVR) Division of the Oceano Dunes District (hereafter, CDPR) for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

**CDFW ROLE**

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically

[1] CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related take authorization as provided by the Fish and Game Code will be required.

In this role, CDFW is responsible for providing, as available, biological expertise during public agency environmental review efforts (i.e., CEQA), focusing specifically on project activities that have the potential to adversely affect fish and wildlife resources. CDFW provides recommendations to identify potential impacts and possible measures to avoid or reduce those impacts.

**Nesting Birds:** CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, eggs and nests include, sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird). CDFW encourages Project implementation occur during the bird non-nesting season. However, if ground-disturbing activities must occur during the breeding season (February through mid-September), the Project applicant(s) is/are responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes.

**Fully Protected Species:** CDFW has jurisdiction over fully protected species of birds, mammals, amphibians, reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. Take of any fully protected species is prohibited, and CDFW cannot authorize their take in association with a general project except under the provisions of a Natural Communities Conservation Plan (NCCP), 2081.7 or a Memorandum of Understanding for scientific purposes.

**Rare Species:** Species of plants and animals need not be listed as Endangered, Rare or Threatened (E, R or T) pursuant to CESA and/or the Federal Endangered Species

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Act (ESA) to be considered E, R or T under CEQA. If a species can be shown to meet the criteria for a listing as E, R or T under CESA and/or ESA as specified in the CEQA Guidelines (California Code of Regulations [CCR], Title 14, Chapter 3, Section 15380), it should be fully considered in the environmental analysis for the Project.

**Lake and Streambed Alteration:** CDFW has regulatory authority with regard to activities occurring in streams and/or lakes that could adversely affect any fish or wildlife resource, pursuant to Fish and Game Code sections 1600 *et seq*. Section 1602(a) of the Fish and Game Code requires an entity to notify CDFW before engaging in activities that would substantially change the bed, channel, or bank of a stream or substantially divert or obstruct the natural flow of a stream.

**Water Pollution:** Pursuant to Fish and Game Code Section 5650, it is unlawful to deposit in, permit to pass into, or place where it can pass into "Waters of the State" any substance or material deleterious to fish, plant life, or bird life, including non-native species. The Regional Water Quality Control Board and United States Army Corps of Engineers also has jurisdiction regarding discharge and pollution to Waters of the State.

**PROJECT DESCRIPTION SUMMARY**

**Proponent:** CDPR

**Project Description:** The Project consists of the ongoing operation and management of the Pismo State Beach and the Oceano Dunes State Vehicular Recreation Area (ODSVRA). CDPR has prepared a draft Habitat Conservation to support the issuance of a Federal incidental take permit (ITP) by the United States Fish and Wildlife Service (USFWS) under Sections 10(a)(1)(A) and 10(a)(1)(B) of the Federal Endangered Species Act (FESA) of 1973. The issuance of the ITP would authorize take of the Federally listed species identified in the DEIR and HCP during the management and operation of two state parks. The DEIR would also support an analysis of impacts in the event that CDPR were to prepare a Natural Community Conservation Plan (NCCP) in support of an application to CDFW for issuance of a permit authorizing incidental take of State-listed animal and plant species pursuant to California Fish and Game Code sections 2800 *et seq*., including section 2835. The analysis of impacts in the draft HCP is based on the current program being implemented by CDPR at Pismo State Beach and ODSVRA. The HCP includes 52 operations and maintenance activities divided into five categories: park visitor activities, natural resources management, park maintenance, visitor services, and other activities. The majority of the activities described in the HCP have been occurring at the parks for decades and are considered part of the baseline environmental conditions of the HCP area. The HCP also includes four new activities that are evaluated in the DEIR:

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1. The capture and captive rearing of western snowy plover (*Charadrius nivosus nivosus;* SNPL) chicks and eggs if they cannot be reunited with an attending adult or are at risk of death or injury from HCP activities not related to HCP species management activities (e.g., motorized recreation, pedestrian recreation, new covered activities).

2. Mechanical trash removal through beach raking or grooming from Grande Avenue south to orientation marker (Post) 6.

3. The removal of seasonal fencing erected along the Boneyard Exclosure (approximately 49 acres) and the incremental removal of seasonal fencing along the 6 Exclosure (60 acres) to allow year-round recreation in these two exclosures.

4. The use of unmanned aircraft systems (UAS) (e.g., drones) in the HCP area to reduce the cost associated with data collection.

The HCP also covers new activities currently being planned or which may be considered in the future that will be evaluated in a separate environmental review for CEQA compliance according to DEIR Section 2.4.2.3.

**Location:** The HCP area includes 5,005 acres of Pismo State Beach and ODSVRA. The HCP area is bound by the City of Pismo Beach to the north, the Guadalupe-Nipomo Dunes National Wildlife Refuge to the south, urban and agricultural land to the east and the Pacific Ocean to the west. Primary access to the HCP area is via United States Highway 101 and State Route 1.

## COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist CDPR in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

**Removal of Seasonal Fencing:** The proposed removal of the seasonal fencing along the east Boneyard Exclosure and the 6 Exclosure would reduce the amount of protected nesting habitat available for SNPL and California least tern (*Sternula antillarum browni;* CLTE) in the HCP area by 1/3, a large portion of which is high quality nesting habitat for these species. This large-scale habitat removal will result in a reduction of available protected nesting habitat which may in turn lead to these species nesting outside of the protected habitat and exposing them to additional potential impacts from human and recreation activities occurring within the HCP area. Additional impacts may also occur from nest overcrowding in the remaining protected areas, outcompetition of available

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nesting space within the remaining exclosures, failure to breed and/or reduced fitness. In addition, by allowing HCP activities to encroach within closer proximity to the remaining areas of protected habitat, the quality of the remaining protected habitat may be reduced. The reduction of available nesting habitat and increased disturbance from HCP activities occurring within and adjacent to these areas may also cause SNPL, CLTE and other migratory bird species to discontinue their use of these areas and the HCP area in general. This would impact not only the populations of these species but also the area's use as a Pacific Flyway Migratory Route and overwintering area for a variety of bird species, thus causing long-term and permanent impacts to several bird species nursery sites, including SNPL and CLTE (a State fully protected species), which would trigger a mandatory finding of significance under the CEQA Appendix G Guidelines. The suggestion that these activities, with the proposed avoidance and minimization measures, will have a less than significant impact on SNPL and CLTE is a gross underestimation by the DEIR and HCP of the severity that the proposed activities will have on these populations and their long-term reproductive success. The 6 Exclosure alone is the location where up to 80% of the CLTE population nests on an annual basis. The proposed DEIR and HCP avoidance and minimization measures including a slow reduction of the 6 Exclosure, a reinstatement of the 6 Exclosure if success criteria are not met, and creating single nest exclosures for SNPL that nest outside of protected areas will not replace nor offset the removal of protected nesting and foraging habitat nor meet the requirements to avoid impacts to a fully protected species (see discussion below). As a result, this should be considered a significant and unavoidable impact under CEQA.

**Mechanical Trash Removal:** The DEIR and HCP propose to initiate mechanical trash removal via raking or grooming in a portion of the HCP area from Grande Avenue south to Post 6 with the possibility of future expansions into additional areas of the HCP. Beach grooming and raking has been shown to reduce the amount of available foraging habitat for avian and other wildlife species by creating a reduction and change in the composition and availability of invertebrates by altering the beach ecosystem in these areas. Invertebrate species provide an invaluable food resource to numerous populations of migrating, overwintering, nesting and foraging bird species that inhabit the HCP area and this activity may reduce or eliminate the HCP area's ability to continue to serve as a suitable stopover for migrating and overwintering birds, impacting the area's ability to continue to support the diversity and density of bird species that travel through the area and use it as an important migratory corridor.

In addition, the continued use of mechanical trash removal in these areas could also result in permanent changes to the dune composition, further reduce the availability of potential nesting habitat for SNPL, and could increase disturbance to adjacent SNPL nesting and foraging habitat even with the proposed 500-foot buffer from known nest sites. The continued disturbance from mechanical trash removal could also lead to the

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preclusion of SNPL and other bird species from nesting and/or foraging in this area in the future.

While the DEIR and HCP does state that a study will be conducted to determine the effect of mechanical trash removal on the invertebrate population, and measures will be implemented if there is a significant decline in invertebrates, this does not guarantee the protection of this invaluable food resource, nor does it guarantee the Project's ability to reestablish not only the abundance, but the diversity of the invertebrate population. The DEIR and HCP also do not describe nor reference whether an exhaustive literature review was conducted and whether results and conclusions could be extrapolated from previous work to further refine the proposed future study testing and methodologies. CDFW recommends the DEIR and HCP be revised to include a discussion of previous studies and literature regarding mechanical beach disturbance and impacts on invertebrate populations. Absent data to demonstrate the robust veracity of the conclusions drawn in the DEIR and HCP, the suggestion that impacts from mechanical trash removal would be short-term and temporary because the activity will only occur for a short duration appears to be a mischaracterization by the DEIR and HCP; the proposed activity may have a lasting impact on these populations and their long-term reproductive success. Therefore, CDFW advises that the impact of mechanical trash removal should be considered a significant and unavoidable impact under CEQA.

**Capture and Captive Rearing of SNPL Chicks and Eggs:** The DEIR and HCP proposes to allow the increased capture and captive rearing of up to 12 SNPL chicks and/or 12 SNPL eggs per year if the chicks and/or eggs cannot be reunited with the adult or are at risk of harm from HCP activities. The DEIR analysis assigns 1/3 of the proposed increase (i.e., 4 SNPL chicks and/or 4 eggs) to the 6 Exclosure reduction, 1/3 to future dust control measures (which will be analyzed in a separate CEQA document), and 1/3 to the increase in chick and egg capture for captive rearing if they are observed to be threatened by recreational activity or other noncovered species management activities that were not previously conducted because currently CDPR attempts to protect nests and move chicks back to the safety of the seasonal exclosure.

The DEIR states that the capture and captive rearing of SNPL chicks and eggs is beneficial because even if some of the chicks or eggs do not survive, it serves to reduce direct mortality or injury that otherwise may occur from HCP activities. While CDFW acknowledges that captive rearing may reduce direct mortality from HCP activities, CDFW would like to point out that the increase in the proposed level of capture and captive rearing would not be necessary if the risk of injury and/or mortality was not increased by the removal of the seasonal exclusion fencing, the encroachment of HCP activities within the former exclusion areas, the reduction in the effort of CDPR attempts to protect nests and move chicks back into the safety of the seasonal exclosures, and the reduced area of available seasonal exclosures for SNPL chicks and eggs to be

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moved back into by CDPR. In addition, CDFW does not agree with the conclusion that the impacts are less than significant because the loss of SNPL chicks and eggs needs to be considered within the context of the conservation program implemented by CDPR in the HCP area, which has increased the breeding population of SNPL, and the increased loss of chicks and eggs is not expected to diminish the enlarged SNPL population sustained by the CDPR conservation program. The enlarged SNPL population sustained by the conservation program is part of the existing baseline for the Project and should not be considered to provide additional offsets to new and increased losses of SNPL chicks and eggs due to the aforementioned activities. Therefore, CDFW does not agree that the capture and captive rearing of SNPL chicks and eggs is a less than significant impact. In addition, the capture and captive rearing of SNPL chicks and eggs is considered take under Fish and Game code (as discussed above) and would require appropriate permits from CDFW before commencement of these activities.

**Special Status Plant Species:** The DEIR and HCP acknowledge the potential for several special status plant species to be impacted by operations and maintenance activities including but not limited to mechanical trash removal, fence installation and removal, and newly proposed activities. In particular, the DEIR and HCP describe impacts to plant species that are both State and federally listed as threatened and endangered including but not limited to the State and federally endangered marsh sandwort (*Arenaria paludicola*) and Nipomo Mesa lupine (*Lupinus nipomensis*); the State threatened and federally endangered Gambel's watercress (*Nasturtium gambelii*); and the State threatened surf thistle (*Cirsium rhothophilum*) and beach spectaclepod (*Dithyrea maritima*). The DEIR and HCP assert that while impacts to these and other plant species could occur, the impacts are less than significant due to limited areas of potentially suitable habitat.

CDFW recommends that all areas with potentially suitable habitat be surveyed for special-status plants by a qualified botanist following the “Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities” (CDFW 2018) prior to initiating any activities that could result in disturbance to the habitat. This protocol, which is intended to maximize detectability, includes identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. In the absence of protocol-level surveys being performed, additional surveys may be necessary.

CDFW also advises the DEIR be revised to avoid special-status plant species by a 50-foot no-disturbance buffer around the outer edge of plant population(s) or specific habitat type(s) that support special-status plant species observed in the Project site. CDFW recommends the 50-foot no-disturbance buffer include indirect impacts such as excessive dust, excessive runoff, or other disturbances that may not result from direct

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ground-disturbance but could also impact habitat quality habitat. If buffers cannot be maintained, then consultation with CDFW is warranted to determine appropriate minimization and mitigation measures for impacts to special-status plant species, or in the case of plant species listed pursuant to CESA or the Native Plant Protection Act, to determine if take can be avoided.

As stated above, if a plant species listed pursuant to CESA or the Native Plant Protection Act is identified during botanical surveys, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization prior to any ground-disturbing activities may be warranted. Take authorization would occur through issuance of an ITP by CDFW, pursuant to Fish and Game Code section 2081(b) or through the approval of an NCCP pursuant to Fish and Game Code section 2800 *et seq*.

**The Use of UAS:** The DEIR and HCP proposes to allow drones and other unmanned aircraft in the HCP area to reduce the time and cost of data collection. Although the DEIR stated that in testing, State Parks personnel have determined that an avoidance buffer of 100 feet above ground and 328 feet away from a nest site is sufficient to avoid flushing and abandonment of SNPL nest sites, CDFW does not know the parameters that were used to make this determination and is unaware of any scientific studies that have demonstrated that these buffers are sufficient to avoid flushing and abandonment of nest sites. These buffers may also be inadequate to avoid take of SNPL, CLTE or other special-status wildlife species as defined in Fish and Game Code and discussed above; therefore, CDFW recommends the DEIR and HCP prohibit the use of all UAS within the HCP area to ensure take avoidance.

**Fully Protected Species:** CDFW has jurisdiction over fully protected species of birds, mammals, amphibians, reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. Take of any fully protected species is prohibited, and CDFW cannot authorize their take in association with a general project except under the provisions of an NCCP, 2081.7 or a Memorandum of Understanding for scientific purposes. The HCP area is not currently within an approved NCCP area; 2081.7 does not apply to the proposed Project, and a development project is not considered a scientific purpose. The fully protected CLTE, white-tailed kite (*Elanus leucurus*; WTK), brown pelican (*Pelcanus occidentalis*), and American peregrine falcon (*Falco peregrines* ssp. *anatum*; APF) are known to occur within the HCP area. This status, and the absence of an NCCP for the Project, precludes CDFW from authorizing any amount of incidental take for fully protected species. When projects show the potential to cause take of fully protected species, we advise on appropriate measures to avoid take. Given the legal status of fully protected animals, take avoidance measures must meet very high standards of effectiveness. CDFW recommends the DEIR be revised to ensure full avoidance of the above-listed species. If full avoidance cannot be achieved, CDFW

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recommends the Project apply for a NCCP and that CDPR cease all ongoing operations and maintenance activities and refrain from implementation of new activities that could potentially result in take of any fully protected species until the NCCP has been approved by CDFW and take authorization pursuant to Fish and Game Code section 2835 has been obtained from CDFW.

**ENVIRONMENTAL DATA**

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDB). The CNNDB field survey form can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Submitting-Data. The completed form can be mailed electronically to CNDDB at the following email address: CNDDB@wildlife.ca.gov. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Plants-and-Animals

**FILING FEES**

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

**CONCLUSION**

CDFW appreciates the opportunity to comment on the DEIR and HCP to assist the CDPR in identifying and mitigating Project impacts on biological resources. Due to the issues presented in this letter, CDFW concludes that the DEIR and HCP do not adequately identify or mitigate the Project's significant, or potentially significant, impacts on biological resources. Deficiencies in the Lead Agency CEQA document can affect later project approvals by CDFW in its role as a Responsible Agency. In addition, because of these issues, CDFW has concerns that the CDPR may not have the basis to approve the project or make "findings" as required by CEQA unless the environmental document is modified to eliminate and/or mitigate significant impacts, as reasonably feasible (CEQA Guidelines, §§ 15074, 15091 & 15092).

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Questions regarding this letter or further coordination should be directed to Lori Bono, Senior Environmental Scientist (Specialist), at the address provided on this letterhead, by telephone at (559) 243-4014, extension 350, or by electronic email at Lori.Bono@wildlife.ca.gov.

Sincerely,

Julie A. Vance
Regional Manager

ec: Office of Planning and Research, State Clearinghouse, Sacramento

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# RECOMMENDATIONS

A. Setting Traffic Closures to avoid impacts to steelhead

1. Set traffic closures when A) the San Luis Obispo County gage is reading 8.53 ft and B) during steelhead migration Dec 01 through June 15. This is the reading when the adult steelhead was observed migrating from the ocean (and discovered to be freshly dead) on March 05, 2025 at 6:30am. This would likely be the most protective standard that could be used to trigger beach closures. **This value would trigger traffic closure 43.5% of the time during the steelhead migration period.**

**2. Set traffic closures if all three are true:** A) tide is greater than 4.67 ft (4.67 ft is the lowest high tide); B) during steelhead migration season (December 01 to June 15); and C) stage at the old USGS gage (which is also on the SLO County website) is greater than 97.2 ft (which corresponds to 4 cfs) to obtain a 0.16 ft depth for passage at the sandbar. **This value would trigger traffic closure 11% of the time during the steelhead migration period.**

B. Deploy a trail camera to quantify impacts.

> Example: trail cam that has an infrared sensor – wouldn't need external power. Could mount it at the top of the post that was out there just upstream of where the vehicles were crossing. Have it angled down and looking towards the ocean. Pretty cheap – you can get a two-pack for $123: 2-Pack Stealthy Trail Game Cameras for Wildlife Deer Observation & Hom – BlazeVideo USA

C. Fish population status and trend monitoring (e.g., seining, trapping, DIDSON, water quality profiles in the lagoon) could be an indicator of overall health and is also less effective as a tool to set traffic closures.

D. Concerns regarding the use of a weir or trap (relative to Recommendation C above) to capture adult steelhead entering Arroyo Grande Creek include:

- **Trapping is not an effective method for triggering traffic closure.** We support the concept of trapping to get an understanding of smolt and adult steelhead abundance and timing of migration individual steelhead.
    - As it relates to traffic closures, there is already enough information in the literature to describe the time period (generally December 01-June 15) when there are sufficient flow conditions (depth and velocity) conditions.

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        - The steelhead abundance is low in Arroyo Grande Creek, therefore we expect a "patchy return" making it difficult to say when the run has "officially" started and stopped.
        - By the time steelhead were to make it in the trap, they would have already crossed the beach and be at risk of getting run over.
        - The trap targets upstream migrating adult steelhead and doesn't account for outmigrating kelts and smolts thus not triggering traffic closures and imperiling fish during their outmigration.
        - Basing traffic closures on hydrology during the migration period is more protective of steelhead and also less expense and less effort than running a trap.
    - **The trap blocks downstream migration**: We have concerns that the existing trap designs may block steelhead downstream passage of of post-spawn steelhead returning to the ocean (kelts) and smolts and must minimize the potential for entrainment of adult and juvenile steelhead and Tidewater Goby in mesh, panels, posts, etc.
    - **The trap is more expensive and more staff-intensive**: The trap must be checked regularly at frequent intervals by qualified biologists to minimize the chance for mortality of adult steelhead in the "live box", and to ensure that no fish have been entrained in mesh anywhere along the length of the trap.
    - **Traps can't be maintained in place at all times steelhead are migrating**: Unless operated continuously across the entire migratory period, trapping will provide an incomplete assessment of adult steelhead migration into Arroyo Grande Creek and would not be a reliable method of informing criteria for closure of the Arroyo Grande Creek vehicular crossing.
    - **Existing Trap Design does not assess outmigrating kelts and smolts**: Unless a downstream migrant trap is used, trapping efforts will be unable to assess the migration of steelhead smolts and kelts into the Arroyo Grande Creek lagoon and past the vehicular crossing

# OTHER NOTES:

**(1)** Initial simulations indicated that passage at low tide would require extremely high stage levels at the pressure transducer. **This indicates that upstream passage is generally going to be at high tide.** At high tide, an upstream boundary condition of 8.97 feet resulted in a continuous thalweg depth of 0.7 feet or greater. **Based on the pressure transducer data, this would correspond to a gage value on the San Luis Obispo County**

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**website of 9.22 feet**. **This gage criteria may cause beach closure to traffic 1.4% percent of the time during steelhead migration season.**

NOTE: Tidal level was determined to have a greater influence in providing fish passage than was flow. This appears to be based on a couple of factors: (i) flows tend to "fan out" across the beach with little depth and also (ii) locations where the flow fans out is just above high tide, so backwater effects from high tide dampen changes in depth with flow.

(2) Because the fish passage flow equivalent is estimated to be 240 cfs, increased releases from Lopez Lake per recent litigation and the ongoing development of the Habitat Conservation Plan (HCP) isn't expected to be sufficient to substantially affect closure to traffic.

(3) There will be a need to re-evaluate passage in the future if there are substantial changes to channel morphology.

# INTRODUCTION

The purpose of this investigation was to develop a tool to predict conditions at which upstream passage of adult steelhead from the Pacific Ocean into Arroyo Grande is likely to occur, based on stage levels at the San Luis Obispo County Arroyo Grande Lagoon gage No. 769 (https://wr.slocountywater.org/sensor/?site_id=11&site=e34cef5c-5976-432a-9cd9-ac6cf5d9cf7a&device_id=1&device=56a57c26-9b2b-415a-a5af-d9e9bb5d7f53). Based on aerial imagery from Google Earth, the location of the channel into the Pacific Ocean varies significantly from year to year (Figure 1). Arroyo Grande Creek below Lopez Dam is closed to all fishing all year.

# METHODS

Four RTK GPS receivers were used to collect topographic data for the Arroyo Grande channel on January 29, 2025 (Figures 2 and 3). All topographic data were in California Stage Plane Zone 5 NAD83 feet, with the NAVD88 vertical datum. A pressure transducer was installed near the downstream end of the Arroyo Grande Lagoon. One of the RTK GPS units was used to measure the water surface elevation at the pressure transducer, as well as at the San Luis Obispo County Arroyo Grande Lagoon gage No. 769 at 10 AM on January 29, 2025. A barometer was installed at the State Parks Oceano Dunes entrance booth to correct the pressure transducer readings for barometric pressure. The pressure transducer and barometer were set to record observations every 15 minutes, starting at 10 AM on January 29, 2025 and ending at 9:45 AM on February 26, 2025.

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Figure 1
Arroyo Grande Channel Alignments (Red Lines). Yellow Pushpin is the Alignment in January 2025.

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Figure 2
Arroyo Grande 1/29/25, 12:16 PM, Tide = 3.92 feet



Figure 3
Arroyo Grande Vehicle Crossing, 1/29/25, 2:10 PM, Tide = 0.37 feet

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A raster was created from the RTK GPS data, and overlaid on top of LIDAR data downloaded from https://apps.nationalmap.gov/downloader/#/ to create an initial terrain in the U.S. Army Corps of Engineers Hydrologic Engineering Center's River Analysis System (HEC-RAS) computer software program Version 6.5 (USACE 2024). A 2D flow area with a three foot computational mesh and a Manning's n value of 0.03 was created. The SWE-ELM equation set and the conservative turbulence model were used, with a longitudinal mixing coefficient of 0.3, a lateral mixing coefficient of 0.1, and a Smagorinsky coefficient of 0.05. The model had stage hydrograph inflow and outflow boundary conditions, with low and high tide used for the downstream boundary condition and stage at the pressure transducer used for the upstream boundary condition. The model was run at both low and high tides for a range of upstream stage values. Adult steelhead passage was predicted when the thalweg depth was consistently at least 0.7 feet, per CDFW (2017).

# RESULTS

A total of 7,905 topographic data points were collected. The water surface elevation at the pressure transducer was 8.71 feet, while the water surface elevation at the San Luis Obispo County gage was 9.52 feet. The corresponding gage value given on the San Luis Obispo County website was 9.05 feet. Average high tide is 5.47 feet, while average low tide is -0.11 feet. Topographic data was not collected far enough into the ocean to simulate low tide. As a result, 1 foot was used for the downstream boundary condition for low tide. Initial simulations indicated that passage at low tide would require extremely high stage levels at the pressure transducer. This indicates that upstream passage is generally going to be at high tide. At high tide, an upstream boundary condition of 8.97 feet resulted in a continuous thalweg depth of 0.7 feet or greater. Based on the pressure transducer data, this would correspond to a gage value on the San Luis Obispo County website of 9.31 feet. As shown in Figure 4, there was a reasonably strong relationship between the pressure transducer and San Luis Obispo County gage, although the relationship appeared to shift after the high flow on 2/13/25. Using the relationship after 2/13/25, an upstream boundary of 8.96 feet would be equivalent to a stage of 9.22 at the San Luis Obispo county gage.

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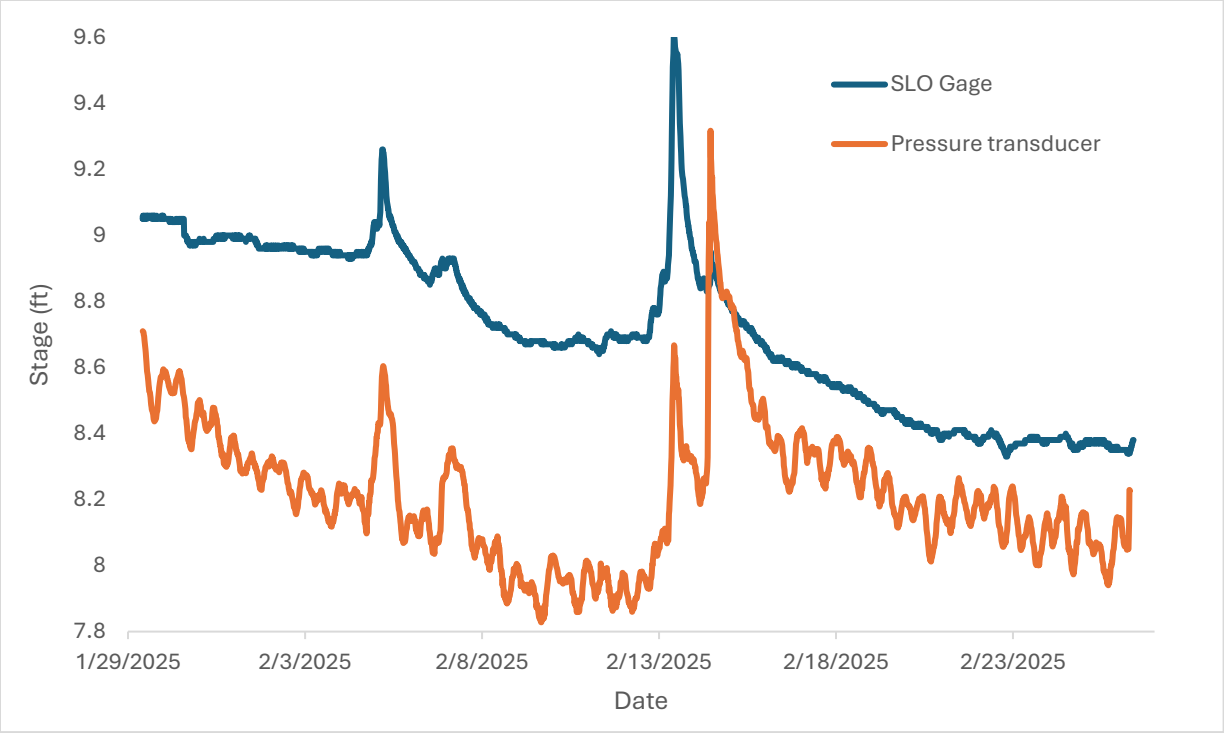



Figure 4
Pressure Transducer and SLO Gage Stages During Pressure Transducer Deployment

# DISCUSSION

For a given channel alignment, a gage value of 9.22 feet or greater on the San Luis Obispo County website should consistently correspond with conditions at which adult steelhead passage occurs, per the concept of dynamic equilibrium, where the specific most critical condition, although it may move spatially, will be consistent in terms of its relationship with upstream stage. The portion of Arroyo Grande below high tide did not have a defined channel and was over 300 feet wide, resulting in a very high stage needed to provide upstream passage. In contrast, the portion of Arroyo Grande above high tide had a defined channel and a wetted width of under 140 feet, allowing for upstream passage at a much lower upstream stage (Figure 5). It is recommended that the surveys and modeling presented here be redone whenever there is a significant change in the channel alignment.

The 0.7 foot depth criterion provides for unobstructed passage of the full size range of adult steelhead with no injury from abrasion with the stream bottom. A shallower depth, such as 0.5 feet, would allow smaller adult steelhead to pass with some risk of injury of larger fish due to abrasion with the stream bottom. A stage of 8.86 feet at the pressure transducer would provide at least a 0.5 foot thalweg depth at high tide. This would correspond to 9.12 feet at the San Luis

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Obispo County gage, or a 1.9% closure during the steelhead migration season. The fish passage flow equivalent to a stage of 8.86 feet at the pressure transducer would be 162 cfs. In comparison, the highest pulse flow from Lopez Lake per recent litigation and the ongoing development of the Habitat Conservation Plan (HCP) is 50 cfs.

Steelhead smolt outmigration would require a thalweg depth of 0.3 feet. Conditions during the survey (pressure transducer elevation of 8.71 feet with corresponding flow of 4 cfs) had a continuous thalweg depth at high tide of at least 0.16 feet. This would correspond to 8.97 feet at the San Luis Obispo County gage, or a 16.9% closure during the steelhead migration season.

On March 5, 2025 at 6:30 AM an adult steelhead was migrating from the ocean into Arroyo Grande Creek. The San Luis Obispo County gage was reading 8.53 at that time. This would likely be the most protective standard that could be used to trigger beach closures. This value is exceeded 43.5 percent of the time during the steelhead migration period. Note there is considerable uncertainty in the relationship between levels at San Luis Obispo County gage and percent beach closure, since the historic record corresponding to the current location of the Arroyo Grande Creek outlet is only from April 1, 2024 to April 10, 2025.

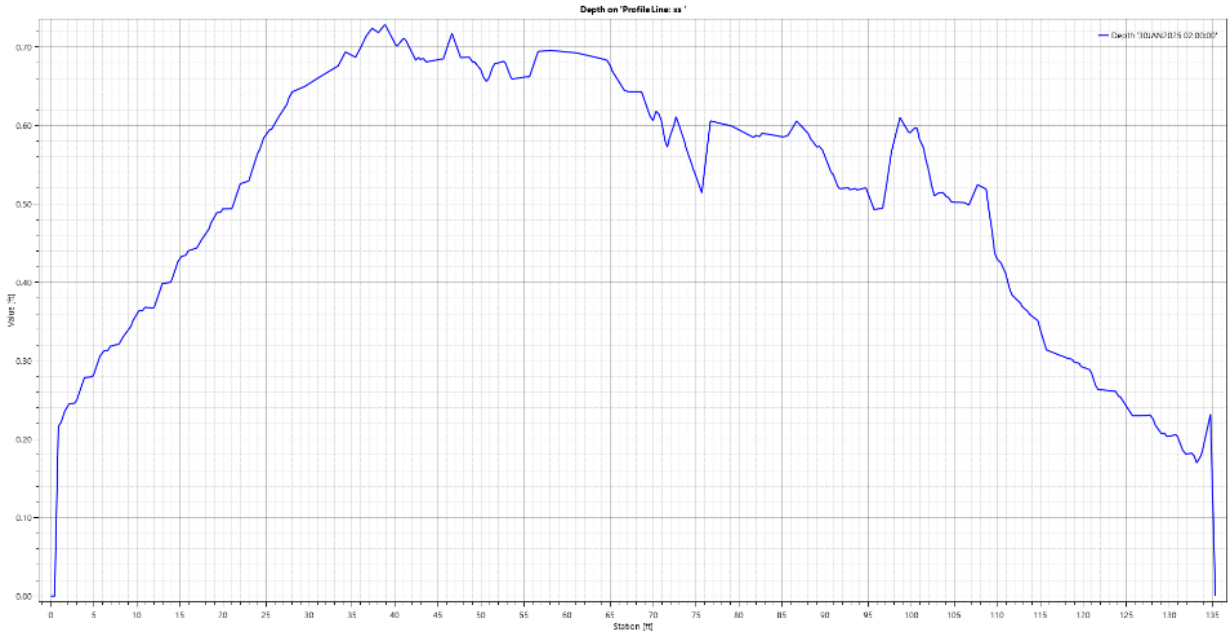



Figure 5
Arroyo Grande Channel Cross-section at Upstream Stage of 8.97 and High Tide

# REFERENCES

CDFW. 2017. Standard Operating Procedure for Critical Riffle Analysis for Fish Passage in California. CDFW-IFP-001. September 2017. https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=150377&inline

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USACE. 2024. HEC-RAS river analysis system. Version 6.5 [computer software]. U.S. Army Corps of Engineers, Hydraulic Engineering Center (HEC), Davis, CA: 24. Available: https://www.hec.usace.army.mil

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# Attachment 1

## CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
## RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

**PROJECT: Oceano Dunes District Habitat Conservation Plan (HCP) (Plan)**

**State Clearinghouse No.: 2018011012**

| **RECOMMENDED MITIGATION MEASURE** | **STATUS/DATE/INITIALS** |
|---|---|
| ***Before Disturbing Soil or Vegetation*** | |
| **Crotch's Bumble Bee (CBB)** | |
| **Recommended Mitigation Measure 1:** CBB Habitat Assessment | |
| **Recommended Mitigation Measure 2:** CBB Surveys | |
| **Recommended Mitigation Measure 4:** CBB Take Authorization | |
| ***During Construction*** | |
| **Crotch's Bumble Bee (CBB)** | |
| **Recommended Mitigation Measure 3:** CBB Avoidance | |

SLO COUNTY apcd | Air Pollution Control District
San Luis Obispo County

**VIA EMAIL ONLY**

January 23, 2026

Ronnie Glick, Senior Environmental Scientist,
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SUBJECT: Recirculated Draft EIR for the Oceano Dunes District Habitat Conservation Plan

Dear Mr. Glick,

Thank you for the opportunity to comment on the Recirculated Draft EIR (DEIR) for the Oceano Dunes District Habitat Conservation Plan (HCP) prepared by the California Department of Parks and Recreation (State Parks) in support of your application for an Incidental Take Permit (ITP).[1] The San Luis Obispo Air Pollution Control District (District) has reviewed the draft HCP and DEIR, which propose certain activities at the Oceano Dunes State Vehicular Recreation Area (ODSVRA).

The District has no expertise in or authority over biological resource management. Rather, we reviewed the HCP and DEIR focusing specifically on how the proposed activities may interact with dust control projects that are necessary to comply with the Stipulated Order of Abatement in Case 17-01 (SOA).[2] Our intent in providing these comments is to ensure that efforts to manage air quality and biological resources complement each other rather than come into conflict. We believe these efforts can, in fact, be synergistic. For example, the 48-acre foredune restoration area was established as a dust control project, but it has also proven to be a successful nesting area for protected shorebirds as shown on Map 11d of the HCP.

[1] "Receipt of Incidental Take Permit Application and Draft Habitat Conservation Plan and Draft Environmental Assessment for the California Department of Parks and Recreation, Oceano Dunes District, San Luis Obispo County, California," 90 Fed. Reg. 52993, November 24, 2025.

[2] San Luis Obispo County Air Pollution Control District Hearing Board, "Order To Modify Existing Stipulated Order Of Abatement," Case 17-01, filed October 16, 2025. Available online at https://storage.googleapis.com/slocleanair-org/images/cms/upload/files/2025%20Fourth%20Amendment%20to%20Stipulated%20Order%20of%20Abatement%2017-01_FILED%2010-16-2025.pdf.

## General Comments

Overall, the District is pleased to see air quality impacts are considered in the HCP and DEIR. Regarding the mechanical raking component of the General Facility Maintenance activity (CA-21), we agree that air quality impacts are likely negligible, as long as raking is confined to the camping and open riding area, where the sand surface is already disturbed by vehicular activity. Our comment letter on the 2020 HCP draft[3] expressed concerns over the air quality impacts of this activity, however, a study has since demonstrated that mechanical ranking does not increase emissions from sand surfaces that are already disturbed by off-roading. This study was conducted by Desert Research Institute (DRI) and the employed methodology developed by the Scientific Advisory Group (SAG) established under the SOA.[4]

A3-1

The District also agrees that the Limited Trail Riding activity (CA-42) is likely to have a less than significant impact on air quality. We are encouraged that Dust Control Activities (CA-44) are included in the HCP, and we generally agree with how they are described. The Reduction of Boneyard and 6 Exclosures activity (CA-50) will be discussed in more detail later, but we are encouraged that the HCP's discussion of this activity always includes the caveat that it would be implemented only "if opening the area is consistent with the requirements of other programs," which we take to include compliance with the SOA.

## Disposition of the Southern Exclosure

The Southern Exclosure is the approximately 300-acre area that State Parks calls the "Plover Exclosure" in other contexts, including the Annual Reports and Work Plans (ARWPs) prepared under the SOA. For at least two decades, the Southern Exclosure has been closed to vehicles and pedestrians at least seasonally to protect western snowy plovers (SNPL) and California least terns (CLTE), two special status bird species. Until 2021 vehicle and pedestrian access to the Southern Exclosure was allowed from October 1 through the end of February, but the area has been closed to vehicles and pedestrian year-round since then. The HCP and DEIR—as well as the related Environmental Assessment (EA) prepared by the U.S. Fish and Wildlife Services in accordance with the National Environmental Policy Act—are not clear about this and tend to discuss the Southern Exclosure as though vehicular activity and camping continue to be allowed there seasonally. Examples include, but are not limited to:

A3-2

- HCP page 2-15: "Each year, from approximately March 1 through September 30 during the SNPL and CLTE breeding season, CDPR encloses approximately 300 acres of Oceano Dunes SVRA open riding area plus approximately 68 acres in North Oso Flaco Exclosure within a 6-

[3] San Luis Obispo County Air Pollution Control District, "Subject: Draft Environmental Impact Report (EIR) for the Oceano Dunes District Habitat Conservation Plan (HCP) (State Clearinghouse No. 2018011012)," May 28, 2020. Available online at https://storage.googleapis.com/slocleanair-org/images/cms/upload/files/APCD_HCP_DEIR_CommentLetter.pdf.
[4] J.A. Gillies and G. Nikolich, "Evaluation of Potential Changes in Dust Emissions due to Mechanical Raking of ODSVRA Beach Areas," Attachment 05 to California Department of Parks and Recreation, Off-Highway Motor Vehicle Recreation Division, "Oceano Dunes State Vehicular Recreation Area Dust Control Program: Provisional Final 2025 Annual Report and Work Plan," September 26, 2025. Available online at https://storage.googleapis.com/slocleanair-org/images/cms/upload/files/2025_ARWP_Provisional_Final_Attachments_reduced_ALL.pdf

foot-tall seasonal exclosure." This paragraph later clarifies that "The seasonal exclosure and the adjacent shoreline fencing remained in place 2021 to 2024 and was closed year-round during this period," but even this is not entirely accurate since the fences have remained in place beyond 2024. As discussed below, the earliest the fences could be removed and vehicular access restored is October 2026.

- HCP page 4-50: "Public access between Oso Flaco and East Boneyard is allowed via a gate (Boneyard gate), but this access is currently inaccessible during the SNPL breeding season since it is enclosed within the southern end of East Boneyard Exclosure. [Emphasis added.]" This statement implies that the exclosure fences are removed seasonally.
- HCP page 5-5: "Following the SNPL and CLTE breeding season (i.e., between October and February), camping, street-legal vehicles, and OHVs are allowed in the Southern Exclosure area (see section 2.2.2.1.1)." This paragraphs also states that "staff place material in bare areas of the 6, 7, and 8 Exclosures to enhance SNPL breeding habitat," however, State Parks staff have communicated to the District that this has not occurred since the area was closed year-round in 2021.
- DEIR page S-12: "Under this alternative, the proposed reduction of the Southern Exclosure identified in CA-50 would be eliminated from the HCP; the 6 Exclosure (62 acres) and the East Boneyard Exclosure (47 acres) would remain part of the Southern Exclosure and continue to be closed during the nesting season (March 1 – September 30) and open during the winter season (October 1 – February 28). [Emphasis added.]"
- DEIR page 2-44, Figure 2-6: The legend indicates that the Southern Exclosure is "Seasonally open to dogs, horses, camping, and OHV riding from Oct 1-Feb 29."
- DEIR page 4-16: "These two areas [6 Exclosure and East Boneyard Exclosure] are exclosed seasonally for 7 months of the year (March 1 through September 30) to provide protected nesting habitat for SNPL and CLTE."
- DEIR page 9-16: "Currently, the open riding area open to OHV use is 1,138 acres, which includes approximately 300 acres that are seasonally closed for nesting habitat (Table 8-4)."

A3-2

In these examples and elsewhere in the HCP, DEIR, and EA, **the Southern Exclosure is portrayed as currently open to vehicles on a seasonal basis, when, in fact, vehicles have not been allowed in the area since 2021**. This reality is occasionally acknowledged in the documents, but generally only in footnotes and parentheticals, and the alternatives analyses within the documents nonetheless assume that seasonal access has continued.

Understanding the disposition of the Southern Exclosure is important for at least three reasons:

1. Context for Biological Trends. State Parks tracks various statistics related to SNPL and CLTE including the number of nests, breeding pairs, and fledged chicks. The year-round closure of the Southern Exclosure has resulted in the development of hummocks and the growth of dune vegetation; these changes provide dust control benefits but, according to State Parks, could also degrade habitat for SNPL and CLTE. The trends in biological indicators of these species should be interpreted with accurate knowledge of the status of the Southern

A3-3

Exclosure in mind. While the new hummocks and vegetation appear to have changed nesting patterns, it is not clear from looking at the graphs in the HCP that long-term trends in biological indicators have been adversely affected.

2. Alternatives Analysis. As required by statute, the DEIR evaluates various alternative projects. The analysis uses seasonal management of Southern Exclosure as the baseline or current condition of this area; however, by the time the HCP and DEIR are approved, the area will have been closed to vehicles for at least 5 years (i.e., since 2021 through at least 2026). Thus, the analysis of alternatives may be defective. For example, DEIR section 9.2.3, Alternative 3, "Permanent Year-Round Southern Exclosures," states that "This loss of recreation opportunity under the Permanent Year-Round Exclosure Alternative would combine with the Dust Control Program recreational acreage reduction to potentially create a significant and unavoidable cumulative loss of recreation opportunity." However, the area is already closed, so there would be no new loss of recreation opportunity. **A3-3**

3. Air Quality Impacts of CA-50. The air quality impact of CA-50—the opening the 6 Exclosure and Boneyard to year-round vehicular activity—will be underestimated if the baseline is incorrectly assumed to be seasonal management. Under the SOA, State Parks must achieve certain emission reductions by October 2028,[5] so any increase in dust emissions associated with CA-50 will need to be offset elsewhere in the Park in order to remain in compliance with the SOA.

## Reduction of the Boneyard and 6 Exclosures (CA-50)

The District has concerns with CA-50, the planned reduction in size of the Southern Exclosure. As discussed above, the entire Southern Exclosure has been closed to vehicles and camping since 2021, though it previously was open to these activities seasonally. While the closure was unrelated to air quality, it nonetheless has had beneficial impacts on air quality, and State Parks has therefore sought to "credit" the resulting emission reductions toward achieving the SOA-mandated emission reduction goal. The 300-acre closure is thus an integral part of State Parks' most recent ARWP,[6] and for this reason the District's approval of the ARWP included a condition requiring that "If the [Southern] Exclosure area, in whole or in part, is reopened to public vehicular access, State Parks shall simultaneously implement District-approved dust controls sufficient to offset the resulting increase in emissions."[7] **A3-4**

[5] San Luis Obispo County Air Pollution Control District Hearing Board, "Order To Modify Existing Stipulated Order Of Abatement," Case 17-01, filed October 21, 2024. Available online at https://storage.googleapis.com/slocleanair-org/images/cms/upload/files/Modified%20Stipulated%20Order%20of%20Abatement%2017-01_FILED%2010-21-2024.pdf.
[6] California Department of Parks and Recreation, Off-Highway Motor Vehicle Recreation Division, "Oceano Dunes State Vehicular Recreation Area Dust Control Program: Provisional Final 2025 Annual Report and Work Plan," September 26, 2025. Available online at https://storage.googleapis.com/slocleanair-org/images/cms/upload/files/2025ARWP_ProvFinal_20250926_reduced.pdf.
[7] San Luis Obispo County Air Pollution Control District, "Conditional Approval of California Department of Parks and Recreation's 2025 Annual Report and Work Plan in Response to Stipulated Order of Abatement Number 17-01," October 16,

Thus, to simply return the Southern Exclosure to *seasonal* vehicular access will require State Parks to implement offsetting emission reductions (i.e., dust control projects); to additionally open portions of the area to *year-round* vehicular access will require even more new dust controls. These controls would likely consist of installing vegetation in bare sand areas and/or reducing the area of the ODSVRA available for off-roading. Given the low emissivity of bare sand areas outside of the current riding area, the District is skeptical that State Parks can comply with the SOA while implementing CA-50 unless further restrictions are imposed on vehicular access elsewhere in the Park.

According to the HCP, the primary motivation for opening the Boneyard and 6 Exclosure to year-round access is to enhance recreational opportunities, but this may amount to "robbing Peter to pay Paul" if recreational opportunities must be lost elsewhere in the Park to maintain compliance with the SOA. The EA fails to account for this possibility in its analysis of the impact of CA-50 on recreation (DEIR Section 8.3). Therefore, the conclusion that CA-50 will have a beneficial impact on recreation may be erroneous.

A3-4

Regarding the analysis of air quality impacts of CA-50, Mitigation Measure AIR-1 is proposed to "ensure emissions from the Oceano Dunes SVRA, inclusive of CA-50 activities, continue to comply with SOA #17-01." Overall the approach in AIR-1, as described in the DEIR, appears adequate; however, please note that, per the District's approval of State Parks' 2025 ARWP, offsetting dust controls are required to be installed ***before*** opening any of the Southern Exclosure to vehicular access, not after.

Finally, the District questions the rationale for rejecting the project alternatives that would leave the Southern Exclosure intact, with or without seasonal vehicular access. The alternative with CA-50 removed from the list of activities ("Alternative 2: Reduced Disturbance in Dust Emission Areas") was rejected because it allegedly conflicts with the 2005 Consent Decree between State Parks and the Sierra Club and "thus does not achieve the project objective of facilitating implementation of legal settlement conditions and obligations." (DEIR page 9-13.)

The District has reviewed the consent decree,[8] and while reducing the extent of the 6 Exclosure is *consistent* with the terms of the consent decree, we did not find language that *requires* it. The third term of the consent decree states, in part, that "State Parks shall support a northern [Southern Exclosure] boundary of Distance Marker Number 7 in the HCP Process, notwithstanding the terms of this Consent Decree." State Parks appears to interpret this as meaning they are required to reduce and ultimately eliminate the 6 Exclosure. However, this interpretation stands the intent of the consent decree on its head. The consent decree stems from a lawsuit brought by the Sierra Club alleging that State Parks was violating the Endangered Species Act by allowing a take of SNPL and CLTE without a valid ITP. Protecting these species by expanding the Seasonal Exclosure to its present

A3-5

2025. Available online at https://storage.googleapis.com/slocleanair-org/images/cms/upload/files/2025%20ARWP%20Final%20Conditional%20Approval.pdf.

[8] U.S. District Court. 2005. Sierra Club v. Rusty Areias etc. et al. Consent Decree. Central District of California. Case No. CV 01-10598-GHK.

boundaries is a key element of the consent decree. Understood in this context, the third term *allows* State Parks to propose a northern boundary no further south than Marker 7 in the HCP, but it does not preclude leaving the Southern Exclosure as it is today.

In fact, in their comments on State Parks' 2018 Preliminary Scoping Report for the HCP, the Sierra Club specifically opposed the proposal to shrink the Southern Exclosure. They state, "The proposed alternative that would reduce current nesting and breeding snowy plover and least tern habitat must be eliminated from further consideration and, instead, the [U.S. Fish and Wildlife] Service should consider expanding the protected area and making the protection year-round." (DEIR Appendix A, page A-89.)

A3-5

Finally, regardless of how the third term of the consent decree is interpreted, it applies only to the 6 Exclosure, i.e., the northernmost section of the Southern Exclosure. There is nothing in the consent decree about the Boneyard Exclosure, so compliance with the consent decree cannot be used as a rationale for removing that area from the Southern Exclosure.

## Habitat Manipulation

The HCP contemplates habitat manipulation activities within the Southern Exclosure that could have air quality impacts, but these impacts are not considered in the DEIR. For example, the description of CA-12b on HCP page 2-24 states that State Parks "anticipates needing to remove during the non-breeding season the non-native sea rocket and larger dune hummocks in heavily vegetated areas where nesting has reduced in the Southern Exclosure." The scope of such manipulation could exceed 5 acres/year. Certain Avoidance, Minimization, and Mitigation Measures (AMMs) also plan for these activities, specifically SNPL AMM 46 (HCP page 5-24 and Table 5-2) and CLTE AMM 37 (HCP page 5-36 and Table 5-3). The development of surface roughness (i.e., vegetation) and topography (i.e., hummocks) in the Southern Exclosure has reduced the potential for dust generation under high winds and thus improved air quality. Therefore, undoing these changes will necessarily have air quality impacts, which the DEIR has neglected to consider. DEIR Section 5.3 discusses the potential increase in vehicle trips related to CA-12b (concluding they their impact is insignificant) but no mention is made of habitat manipulation. The DEIR should be revised to consider these air quality impacts.

A3-6

## New Dune Vegetation

The description of Dust Control Activities (CA-44) on HCP page 2-42 states that "for the purposes of this HCP, Dust Control Program covered activities include: *Continued implementation of annual Dust Control Program activities … Supplemental foredune planting … New non-foredune vegetation plantings and seasonal and/or temporary dust control measures … Preservation of foredune vegetation in the Southern Exclosure … New track-out control*." The District agrees that these are ongoing and/or possible future dust control activities that are or may become necessary to achieve compliance with the SOA and air quality goals. However, not mentioned is the possibility of new foredune vegetation plantings *outside* of the 48-acre foredune restoration area. No such projects are currently being considered, but it is possible that such planting could become necessary in the future, especially if

A3-7

dust controls already in place are scaled back (for example, as envisioned in CA-50). As quoted above, the draft HCP does not explicitly state that the list of Dust Control Program covered activities is all-inclusive. Therefore, if approved, the HCP should not be interpreted to preclude the possibility of foredune planting outside of the current 48-acre area. Simply put: the HCP should not be used to limit the scope of future dust control measures—all possible tools should remain available. **A3-7**

## Other Comments

- DEIR page 5-9 refers to District "Rule 402, Nuisance, Visible Emissions." Rule 402 is simply Nuisance; Rule 401 is Visible Emissions. **A3-8**
- DEIR page 5-11 states that "The 2022 ARWP showed that, under certain modeling scenarios, State Parks had achieved the SOA's initial target to reduce 24-hour PM10 mass emissions by 50%." This statement should be struck from the DEIR as the modeling scenarios that it refers to were found to be unrepresentative, "apples-to-oranges" comparisons, and not relevant to determining compliance with the SOA. Key assumptions in the modeling for 2022 ARWP are no longer used in the current model. **A3-9**
- DEIR page 5-18 states that "the results of the modeling indicated Oceano Dunes SVRA is in compliance with the SOA, as amended." While this is the conclusion of the most recent ARWPs, please note that the District has not yet concurred. The District's position is that State Parks may or may not be in compliance with the SOA's emissions reduction goal—additional information is needed to make the assessment. Under the SOA, State Parks has until October 16, 2028, to obtain the approval of the District's Hearing Board that the approved excess emissions goal has been met. **A3-10**
- DEIR page 5-19 states that State Parks "coordinated with the SAG and the DRI to adjust the 2025 ARWP excess emissions model to reflect a seasonal recreation status for the plover exclosure." This may not be accurate and may need revision. In conversations with SAG members, they expressed no knowledge of the HCP and DEIR and stated they were not consulted. The District needs more information to assess the validity of the emissions calculations in this section and takes no position on them at this time. **A3-11**
- Regarding DEIR Section 5.3.2, the District commends State Parks for thinking ahead about the potential emissions changes related to CA-50, but we need more information to assess the calculations in this section. **A3-12**
- DEIR Section 8.2.3 begins "The California Coastal Act defines 'coastal-dependent development or use' to mean any development or use that requires a site on, or adjacent to, the sea to be able to function at all (PRC § 30101). CDPR considers beach- and dune-oriented recreational opportunities to be coastal-dependent recreation activities." It then includes "beach and coastal dune vehicular recreation" in a list of coastal-dependent recreational activities. However, merely appending the phrase "coastal dune" to an activity does not thereby confer special status or protections to that activity. While certain activities listed in this section—fishing, viewing marine wildlife, and kite boarding—are indeed coastal-dependent, this is because they require proximity to the sea to function at all. In contrast, vehicular recreation is not dependent on the coastal environment, nor does it become so **A3-13**

through an act of labeling or stipulation. By logic of the DEIR, nearly any activity that can occur on a beach could be defined as coastal-dependent and entitled to the protections and privileges of the Coastal Act and/or CEQA.

We point this out because later in Section 8.3 the document defines as a significant environmental impact anything that would "Substantially limit, reduce, or interfere with established coastal recreational opportunities." Then in Chapter 9, alternative projects are considered and rejected specifically because of significant impacts on coastal dune vehicular recreation. Such arguments are question begging, or circular, and should be rejected.

A3-13

## Conclusion

Again, thank you for the opportunity to comment on the draft HCP and DEIR. The District continues to believe that air quality objectives can be met while preserving historical recreational opportunities at the ODSVRA, including off-roading. If you have any questions regarding these comments, feel free to contact me at (805) 781-4656 or via email at ktupper@co.slo.ca.us.

Sincerely,



KARL A. TUPPER
Executive Director & Air Pollution Control Officer
San Luis Obispo County Air Pollution Control District

January 22, 2026

Mr. Ronnie Glick
Senior Environmental Scientist
California Department Parks and Recreation
Oceano Dunes District
340 James Way, Ste. 270
Pismo Beach, CA 93449
Submitted via email: comment@oceanoduneshcp.com

**RE: Oceano Dunes District Habitat Conservation Plan (HCP) Recirculated Draft EIR**

Dear Mr. Glick,

On behalf of Audubon California and Morro Coast Audubon Society we respectfully submit comments on the Oceano Dunes District Habitat Conservation Plan Recirculated Draft Environmental Impact Report (DEIR). Our comments address the new activities California Department of Parks and Recreation (State Parks) proposed in the Recirculated DIER. Audubon California, a state office of the National Audubon Society, is a nonprofit conservation organization whose mission is to protect birds and the places they need. Morro Coast Audubon Society is part of the National Audubon Society's non-profit network whose mission is to promote the appreciation, conservation, and restoration of ecosystems, focusing on the biological diversity of birds, and other wildlife, and their habitats, particularly in San Luis Obispo County. Our comments address the new activities California Department of Parks and Recreation (State Parks) proposed in the Recirculated HCP. Oceano Dunes District provides essential habitat for the federally threatened Western Snowy Plover (Snowy Plovers), federally endangered California Least Tern (Least Tern), and several other sensitive migratory shorebirds and other waterbirds. It is crucial that State Parks is held accountable to prioritize the protection of these species and the habitats they depend on.

While some adjustments have been made to the HCP for the Oceano Dunes District, we have several concerns regarding the reduction and elimination of exclosures, negative impacts of off-highway vehicle (OHV) use on listed species, and the proposed take limits not complying with the California Public Resources Code. Due to these reasons, the DEIR should reassess the impacts the proposed new activities have on Snowy Plovers and Least Terns.

O1-1

**The DEIR Inadequately Assesses Adverse Impacts to Snowy Plovers and California Least Terns from Reduced Protections at 6 Exclosure and East Boneyard.**

The HCP proposes to eliminate East Boneyard Exclosure and incrementally reduce the seasonal fencing along the 6 Exclosure, which would be a loss of 109 acres of Snowy Plover and Least Tern breeding habitat. We recognize that State Parks adjusted the 6 Exclosure reduction criteria around the breeding requirements, from 155 breeding pairs in the 2020 HCP to 180 breeding pairs in the 2025 HCP, to take into consideration breeding success. While it is promising to see an adaptive management approach, the criteria adjustment is still insufficient to protect and conserve this threatened species. There are several other changes that can be implemented that ensure the protection of Snowy Plovers. The DEIR (section 9.2.3.3) describes the various impacts reducing or eliminating the 6 Exclosure can cause, such as exacerbating territorial aggression due to a reduction in protected shoreline habitat for foraging, reducing the amount of available habitat for nesting, and increasing the possibility of Snowy Plovers breeding in the open riding area.

The DEIR states that the majority of take at Oceano Dunes occurs after seasonal exclosure fencing is removed. The 6 Exclosure includes habitat along the shoreline, which also protects habitat and disturbance of wintering and foraging shorebirds. O1-2

Exclosures along the shoreline protect beach wrack, allowing it to accumulate and support biodiversity and coastal food webs.[1] There is a strong and positive correlation with the abundance of stranded wrack and wintering shorebirds found on sandy beaches.[2] Wrack is particularly important for Snowy Plovers, as they are visual surface feeders and feed on insects and invertebrates found in the wrack.[3] Reducing and eliminating the 6 Exclosure will expose this section of the shoreline to OHV activities which can impact the accumulation of wrack on the beach and composition and density of the sand.

The 6 Exclosure should remain intact year-round to more adequately protect Snowy Plovers. This will also benefit Least Terns and shorebirds by protecting sandy beach and coastal dune habitat. These species rely on beaches and dunes and are sensitive to disturbances which can modify key behavioral traits that are crucial to their survival and reproduction.

These critical habitats at Oceano Dunes are being exposed to a high level of disturbance due to the recreational activity allowed on site. In addition to this stressor, beaches and coastal dunes

[1] Hyndes, Glenn A., et al. "The Role of Inputs of Marine Wrack and Carrion in Sandy-Beach Ecosystems: A Global Review." *Biological Reviews*, vol. 97, no. 6, 11 Aug. 2022

[2] Defeo, Omar, et al. "Threats to Sandy Beach Ecosystems: A Review." *Estuarine, Coastal and Shelf Science*, vol. 81, no. 1, Jan. 2009, pp. 1–12.

[3] Hyndes, Glenn A., et al. "The Role of Inputs of Marine Wrack and Carrion in Sandy-Beach Ecosystems: A Global Review." *Biological Reviews*, vol. 97, no. 6, 11 Aug. 2022

are facing impacts from climate change, particularly sea-level rise and more intense and frequent storms.[4] Sea-level rise will impact the upper zones of beaches first, which will contribute to the loss of habitat available for wrack accumulation and decrease invertebrate food resources.[5] A case study of several beaches in California projected that a 0.5m increase in sea level rise would results in a 75% loss of upper beach zone where wrack accumulates, which would eliminate around 50% of intertidal biodiversity and vital ecosystem functions.[6]

Despite the numerous threats Snowy Plovers, Least Terns, and shorebirds face throughout their ranges and the impacts their sensitive ecosystems are undergoing from human recreational use to sea-level rise, State Parks has not provided strong enough measures to protect threatened and endangered species. Exclosures should remain intact, limits should be implemented on OHV use both during the day and at night, and the protection of listed species should be prioritized over recreation.

O1-2

**Allowed Incidental Take Should Not Exceed Historic Highs and Should Not Adversely Impact Snowy Plover and Least Tern Populations in the State Park.**

The HCP proposes a new Snowy Plover Avoidance and Minimization Measure (AMM), allowing State Parks to capture up to 12 eggs/4 nests and/or 12 chicks/4 broods per year for covered activities not related to covered species management (i.e. motorized recreation). Due to the proposed reduction and elimination of the 6 Exclosure, State Parks has proposed to install temporary fencing if Snowy Plover nests or chicks are in the riding area. State Parks claims that these measures will reduce impacts to eggs and chicks in the riding areas but some eggs and chicks may still need to be captured to prevent mortality and injury. We have concern over the requested take of eggs and chicks due to the reduction and elimination of the 6 Exclosure. To protect Snowy Plovers from mortality and injury, the 6 Exclosure should remain intact.

O1-3

Overall, we have concerns over the proposed incidental take numbers for Snowy Plovers and Least Terns. State Parks is proposing a take limit of 80 chicks every 5 years. This roughly amounts to 16 chicks per year. However, the highest level of mortality has been 2 chicks since 2002-2023 and the highest level of injured/rescued chicks has been 7. These levels should not greatly exceed historic take trends. A Habitat Conservation Plan should propose actions that improve the population of listed species, not provide opportunities for more take.

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[4] Hyndes, Glenn A., et al. "The Role of Inputs of Marine Wrack and Carrion in Sandy-Beach Ecosystems: A Global Review." *Biological Reviews*, vol. 97, no. 6, 11 Aug. 2022

[5] Hyndes, Glenn A., et al. "The Role of Inputs of Marine Wrack and Carrion in Sandy-Beach Ecosystems: A Global Review." *Biological Reviews*, vol. 97, no. 6, 11 Aug. 2022

[6] Myers, M. R., Barnard, P. L., Beighley, E., Cayan, D. R., Dugan, J. E., Feng, D., Hubbard, D. M., Iacobellis, S. F., Melack, J. M. & Page, H. M. (2019). A multidisciplinary coastal vulnerability assessment for local government focused on ecosystems, Santa Barbara area, California. Ocean & Coastal Management.

**The DEIR Inadequately Assesses Adverse Impacts to Snowy Plovers that will Occur from Opening 48 Acre Foredune Area.**

Opening 48 Acre Foredune Area and the elimination of the 6 Exclosure will leave Snowy Plovers more vulnerable to vehicle strikes. The site is classified as primary habitat for Snowy Plovers and has been closed to the public year-round to establish vegetation as a dust control measure. Since the closure of the site and installation of fencing in 2020, Snowy Plovers have nested throughout the area.

The birds' path from the foredunes to the shoreline will traverse open riding areas, increasing the risk of injury and death. While the HCP states that as vegetation grows, the habitat will transition into secondary and tertiary habitat for Snowy Plovers, it is currently primary habitat for Snowy Plovers and should remain protected year-round. Given that circumstances have changed since the release of the 2020 HCP, the Recirculated DEIR should also evaluate the impacts the removal of the fencing will have on Snowy Plovers.

O1-4

**The Public Resources Code States that the Conservation of Natural and Cultural Resources are the Highest Priorities for State VRAs and Are Not Coequal Goals with Recreational Access.**

The DEIR mischaracterizes California law by implying that conservation and recreational access in state vehicular areas (VRAs) share equal priority. California Public Resources Code section 5090.35, subdivision (a), states: "The protection of public safety … and the conservation of natural and cultural resources are of the highest priority in the management of the state vehicular recreation areas."

The DEIR purposes to "balance" the conservation of listed species with expanded recreational access that will result in high levels of take. Alternative 3: Permanent Year-Round Exclosure section 9.2.3.3 of the DEIR states:

> [t]his loss of shoreline access conflicts with project objectives to balance conservation and recreation demands, particularly to preserve, manage, and expand recreational opportunity and to manage, maintain, and maximize unique coastal camping and recreational amenities.

O1-5

The "balance" provided in the DEIR seems at odds with the OHV's legislated purpose, which is "to provide high-quality OHV recreation opportunities in a manner that is safe, environmentally responsible, and sustainable." (DEIR, at § 2.2.1; see also, Pub. Resources Code, § 5090.02). The legislative findings and intent for Off-Highway Motor Vehicle Recreation should function as a condition on recreational use, not as a co-equal mandate overriding conservation requirements. A management approach that requires an incidental take permit to authorize mortality of Snowy Plovers and Least Terns raises substantial questions about whether such recreation remains sustainable within the meaning of the Act. Where recreation requires legal

authorization to kill listed species in order to persist, it is reasonable to conclude that the use exceeds the bounds of environmentally responsible recreation.

To protect vulnerable species, habitats, and communities, a reduction and limit on OHV use in sensitive habitat is necessary. Reducing or eliminating exclosures exposes Snowy Plovers, Least Terns, and shorebirds to vehicle strikes, increased predation, disturbance in nesting, resting, and foraging, and depleting food source along the shoreline. The DEIR inappropriately represents conservation and OHV access as coequal goals which can lead to negative and irreversible damage to listed species, sensitive habitat, and impacted communities. O1-5

**Conclusion**

For the reasons set forth above, we ask that our concerns be addressed before the DEIR is finalized and any Incidental Take Permits are issued. Audubon is confident that State Parks can meet the multiple user needs at Oceano Dunes without further endangered sensitive species. O1-6

Audubon appreciates the opportunity to provide these comments. We are happy to meet and confer to discuss them with you further or to explore options to improve conditions for sensitive bird species at Oceano Dunes. Please contact me at liliana.griego@audubon.org.

Respectfully submitted,



Liliana Griego
Senior Coastal Program Manager
Audubon California

# O2 California Four Wheel Drive Association & American Sand Association

January 23, 2026

California State Parks OHV Division
Submitted via email to: comment@oceanoduneshcp.com

RE: California Department of Parks and Recreation, Oceano Dunes District Habitat Conservation Plan Recirculated Draft EIR

Dear HCP Planning Team,

California Four Wheel Drive Association (Cal4Wheel) and American Sand Association (ASA) are writing to provide feedback for the Oceano Dunes District Habitat Conservation Plan Recirculated Draft Environmental Impact Report[1], hereto forward referred to as the DEIR. Many of our members and supporters live near and/or recreate throughout the Oceano Dunes SVRA (ODSVRA). This letter of comment shall not supplant the rights of other Cal4Wheel and ASA agents, representatives, clubs, or individual members from submitting their own comments; CA State Parks should consider and appropriately respond to all comments received for the DEIR.

Cal4Wheel and ASA are non-profit organizations (collectively referred to as "The Organizations" throughout this comment letter) representing tens of thousands of off-highway vehicle (OHV) and outdoor recreation enthusiasts. Each of our organizations champion responsible OHV recreation, encourage a strong conservation ethic and individual stewardship. We advocate for responsible use of public lands for the benefit of the general public by educating and empowering our members to secure, protect, and expand shared outdoor recreation access and use by working collaboratively with public land managers and other recreationists. Our members use OHVs of all forms, as well as other motorized methods, to enjoy federally managed lands throughout California, including CA State Parks managed public lands. Cal4Wheel and ASA members visit CA State Parks public lands for motorized recreation to participate in non-motorized and human-powered activity such as sightseeing, photography, dark sky celestial observation, hiking, fishing, wildlife and nature study, camping, observing cultural resources, and other similar pursuits on a frequent and regular basis throughout every season of the year. Additionally, our member clubs enjoy holding events on CA State Parks managed public land. Cal4Wheel and ASA members and supporters have concrete, definite, and immediate plans to continue such activities across the Oceano Dunes District (ODD) and at ODSVRA throughout the future.

## GENERAL COMMENTS

We recognize the positive health and social benefits that can be achieved through outdoor recreation. We also recognize that motorized recreation provides business owners and local communities with significant financial stimulus. Of great importance to the impetus for this comment letter: our members are directly affected by management decisions concerning public land use in CA State Parks managed public lands, including and especially, decisions that impact the scope of public access for outdoor recreation. O2-1

Our members subscribe to the tenets of:

- Public access to public lands now, and for all future generations
- Active stewardship to maintain conservation of public lands, and safety for those who enjoy them

- Conservation of ecological, cultural, and archeological resources in balance with implementation of the Congressional mandate for multiple-use public land management
- Sharing our natural heritage

Our Organizations members as well as the general public desire access to public lands now and in the infinite foreseeable future. Restricting access today deprives our children of the opportunity to enjoy the many natural wonders of public lands. Our members and the general public are deeply concerned about the condition of the environment and public safety. They desire safe means to access public lands to engage in conservation efforts as well as outdoor recreation. The public desires to share our natural heritage now and in the future. How can our children learn about and appreciate our natural heritage when access to public lands is eliminated or restricted due to CA State Parks management activity, when landscapes are allowed to deteriorate due to lack of proper maintenance, and when public lands are made exclusively available to a limited sector of the general public based on the imposition of management decisions that override and eradicate effective implementation of balanced public enjoyment and recreation with preservation of natural and cultural resources?

Our Organizations supports the concept of managed recreation and believes it is prudent to identify areas where OHV use is appropriate. Recreation, especially recreation off of paved or gravel roads, is the leading cause of growth in visitors to public lands[2]. This is a longstanding trend, and it is critical to note, California has led the nation as the state with the highest percentage of population and number of participants in OHV recreation since 2008. The US OHV market is worth more than $10 billion, and California represents over 10% of that market share. It is clear that public interest in OHV recreation is a dominant value and preferred mode of outdoor recreation for residents across the USA, and especially, in California. O2-1

CA State Parks manages 1.59 million acres of public land in California[3], representing 7.6% of the total land mass in this state. California's public lands offer the primary source for the public to enjoy outdoor recreation. Reduction or elimination of public access to CA State Parks managed land thus bears the potential to increase user conflicts and resource damage by removing sufficient recreation access to public lands for all forms of recreation, including OHV. Additionally, degradation of the natural and cultural values of CA State Parks managed public lands diminishes the quality of the outdoor experience for our members, as well as the general public.

Cal4Wheel and ASA have reviewed the DEIR and believes that CA State Parks is legally and procedurally compelled to resolve issues in the following Plan components:

1. Public Resource Code and CA State Parks operational guidelines
2. DEIR assertion of legally indefensible alternatives
3. Discrimination of members of the public with disabilities
4. False assertion of government ownership of state- and federally-managed public lands

**In summary reference to the items noted above, with additional detail for each following within this comment letter, we support any additional comments from individuals, groups, associations, and the general public that encourage CA State Parks to uphold their mission and commitment to the public to manage public lands in California in a manner that maximizes public access and recreation alongside the mission to sustain the health, diversity, and ecological values of ODSVRA for the use and enjoyment of present and future generations. We strongly advocate against any components of the DEIR that would diminish or eliminate public access to ODSVRA**

**now or in the future, and/or diminish the quality of the outdoor recreation experience for our Organizations' membership and the general public.**

O2-1

## PUBLIC RESOURCE CODE AND CA STATE PARKS OPERATIONAL GUIDELINES

California State Parks operate under a set of mandates found in the California Public Resources Code (PRC). The PRC establishes that state parks are to be managed for public enjoyment, recreation, and preservation of natural and cultural resources. For instance:

- *PRC §5001.65 states that the primary purpose of state parks is for the "preservation of the scenic, historic, and scientific values" and for public recreational opportunities in a manner consistent with the protection of those values."*
- *PRC §5019.53 provides that "state park units should be managed primarily for the protection of natural and cultural resources, while accommodating outdoor recreation to the extent that it does not impair those values".*

Therefore, while California state parks support a variety of recreational uses, their guiding principle is not the multiple-use model but instead the protection and conservation of natural and cultural resources alongside public access. The management focus is on balancing recreational use with conservation objectives.

Likewise, the mission of California State Parks in managing SVRAs is focused on maximizing public access specifically for motorized recreation. It emphasizes balanced use, where motorized recreation is encouraged within a framework of resource protection and safety. According to the PRC and the guidelines governing the Off-Highway Motor Vehicle Recreation (OHMVR) program:

O2-2

- *PRC §5090.02 states that the purpose of SVRAs is to provide high-quality recreational opportunities for off-highway vehicle (OHV) enthusiasts while also protecting California's natural and cultural resources. The code specifically mentions that the program should provide "sustainable, environmentally responsible" recreation.*
- *PRC §5090.35 directs the OHMVR Division to balance motorized recreation with conservation, restoration, and management of lands to protect sensitive habitats, wildlife, and cultural resources within SVRAs.*

The mission of the OHMVR program and SVRAs thus centers on responsible recreation, ensuring that motorized recreation does not come at the cost of environmental degradation or resource destruction. Likewise, at SVRAs, environmental and resource preservation should not come at the cost of motorized recreation.

It is critical to note that conservation of wildlife and habitat has already vastly superseded in priority, over the recreational uses of ODSVRA. The total sum of OHV routes and open riding areas comprise a mere 25% of the total acreage of ODSVRA. The balance of 75% of the park's acreage is allocated to a variety of habitat and species conservation sites and projects. While our Organizations acknowledge and support the need for conservation efforts, the imbalance in prioritization of conservation above the preservation of access for motorized recreation, camping, and other recreational purposes is unjustified for multiple reasons.

First, ODSVRA is the only state park within California that permits motorized recreation and camping on the beach. The size of ODSVRA is miniscule in comparison to the hundreds of miles of California coastline that offers similar habitat for native flora and fauna, including federally and state listed endangered and threatened species, and species of concern. Whereas the legislatively designated purpose of ODSVRA is explicitly for motorized recreation and camping access, this purpose has been incrementally eroded in order to prioritize a broad series of ever-expanding conservation projects to the point that conservation is now the primary and centric focus of management objectives for this SVRA.

Second, ODSVRA is located adjacent to the Guadalupe Nipomo Dunes National Wildlife Refuge (Refuge). The Refuge consists of 2,553 acres – nearly double the size of ODSVRA which is only 1500 acres. While the sole purpose of the Refuge is to conserve wildlife and habitat for native, endangered, and sensitive species – the purpose of ODSVRA is to provide opportunities for motorized recreation in balance with conservation. Conservation efforts at ODSVRA should take into account existing conservation efforts at the Refuge. Greater priority for recreational purposes should be a factor in the scope of "balance" of conservation and recreation at ODSVRA, given that the Refuge offers a significantly larger footprint of acreage of nearly identical habitat for the same flora and fauna that are found within the ODSVRA, and, the sole purpose of the Refuge is for conservation.

O2-2

**We contest the scope of Alternatives 2, 3, and 4 of the DEIR given that the balance of purposes at ODSVRA are remarkably out of balance. It is essential that CA State Parks invest in restoration of OHV routes, open riding areas, and camping areas in order to achieve at minimum a 50-50% ratio of acreage that is distributed between designated recreation and conservation projects.**

Since its inception in 1959, Cal4Wheel has been an active, responsible partner of CA State Parks, with members continually engaged in volunteer service to advance conservation, trail and landscape maintenance, public education, public safety, and cooperative public land management. Similarly, ASA has been engaged in the same active stewardship and conservation of CA State Parks public lands since it's founding. Cal4Wheel and ASA clubs and members have a longstanding history, extending for more than six decades, of visiting CA State Parks managed lands as individuals, clubs, and for organized outdoor recreation events. Casual use and organized events like ours bring public land visitors to CA State Parks managed lands in an orderly and controlled manner. This ensures conservation of the landscape and wildlife habitat, while preventing overcrowding and user conflict. Our events promote land use ethics, responsible camping, respect for natural resources, and public safety. It is important that implementation of the DEIR will not obstruct the membership of our Organizations, as well as members of the general public, from accessing ODSVRA for organized, safe, conservation-centric recreation by eliminating or restricting access to established in OHV routes and riding areas.

It is important for CA State Parks to bear in mind that the agency does not own our public lands. CA State Parks managed lands are a part of the public endowment, as all public lands are owned by the citizens of the USA (the public); CA State Parks is merely contracted to manage those lands within the defined scope of limited authority that is granted by PRC. It is important that the DEIR does not overstep PRC intent such that the best interests and needs of the public are being overrun through restriction or elimination of public access to CA State Parks managed lands through unnecessary, arbitrary, and capricious restriction of designated OHV routes and riding areas. This constitutes a violation of the rights and legal protections of the American people through unjustified application of Congressionally-directed public land management authority.

**As remedy, we urge CA State Parks to explicitly state within the DEIR that existing designated OHV routes, riding areas, campgrounds, and other recreation infrastructure is of equal value to the natural resources that are itemized for protection in the DEIR. Additionally, we recommend that all existing recreational infrastructure be categorized as protected infrastructure, not to be restricted, minimized, closed to access, degraded in functional value, or destroyed as a result of HCP and DEIR implementation. Furthermore, we assert the exigence that CA State Parks must invest in restoration of OHV routes, open riding areas, and camping areas in order to achieve at minimum a 50-50% ratio of acreage that is distributed between designated recreation and conservation projects.**

## DEIR ASSERTION OF LEGALLY INDEFENSIBLE ALTERNATIVES

As noted, our Organizations are nonprofits representing tens of thousands of OHV users, families, clubs, and partner organizations who lawfully recreate at Oceano Dunes State Vehicular Recreation Area (ODSVRA). Our members include long-time visitors who rely on OHV access and beach camping to experience coastal resources that are otherwise inaccessible due to mobility limitations, geography, or economic constraints.

Cal4Wheel and ASA support **Alternative 1** because it is **the only alternative analyzed that is capable of expanding OHV and camping access**, through CA-50–type actions that reduce unnecessary exclosures and restore year-round recreation opportunity. However, our Organizations' support is **conditional**. Alternative 1 must be **modified with enforceable legal and managerial sideboards** to ensure that access expansion is real, durable, and not later undermined through mitigation-by-closure, speculative air-quality claims, or adaptive management drift.

### Legislative and Legal Context: ODSVRA Is a Recreation-First Unit

Oceano Dunes is not a generic coastal preserve. It is a legislatively designated State Vehicular Recreation Area, established specifically to provide OHV recreation and camping while managing natural resources (Cal. Pub. Res. Code §5090.24). **Any alternative that structurally reduces recreation opportunity must therefore meet a high legal threshold, demonstrate necessity, and show that less restrictive means are infeasible.** O2-3

CEQA does not authorize agencies to redefine a unit's statutory purpose through environmental review. Nor does the Endangered Species Act[4] (ESA) require the elimination of lawful public use where impacts can be avoided, minimized, and mitigated through management. Courts have consistently rejected "zero-use" assumptions where balanced management is feasible (*Friends of Endangered Species v. Jantzen*, 760 F.2d 976; *Spirit of the Sage Council v. Norton*, 294 F. Supp. 2d 67).

### Alternative 1 Is the Only Expansion-Capable Alternative

As acknowledged in the RDEIR, CA-50–type actions, including reducing or reconfiguring the East Boneyard and the "6 Exclosures," are the only project components that convert seasonal or restricted areas into expanded year-round OHV and camping opportunity. No other alternative includes a comparable access-expansion mechanism. Accordingly:

- **Alternative 1:** Preserves and **expands** recreation access
- **Alternative 2:** Preserves access at best, but does not expand it

- **Alternative 3:** Reduces access through permanent year-round exclosures
- **Alternative 4:** Reduces access through vehicle and camping caps

**If the agencies intend to meet the stated objective of balancing species conservation with continued and improved public access, Alternative 1 is the only option that satisfies that purpose.** O2-3

**<u>Alternative 1 Must Be Modified with Enforceable Sideboards</u>**

Our Organizations' support for Alternative 1 is contingent on the adoption of the following **mandatory implementation protections**, which must be incorporated into the Final EIR, Final HCP, and operational protocols.

1. **No Net Loss of Recreation Access (Acreage + Camping Capacity)**
   The Final HCP must establish and track a **recreation baseline**, including:
   - OHV-open acreage (seasonal vs. year-round);
   - beach driving corridor availability;
   - camping vehicle capacity and seasonal limits.

   Annual reporting must disclose **any reduction, duration, and cause**, with a clear requirement that CA-50 access expansion results in a **net gain** in recreation opportunity over baseline conditions.

2. **Prohibition on Mitigation-by-Closure**
   The DEIR repeatedly suggests that air-quality or biological concerns could be addressed through operational restrictions. This creates a clear risk that **closures become the default mitigation tool**, even where less restrictive measures are available. The Final HCP must explicitly state: O2-4

   *"Recreation access reductions shall not be presumed to be the preferred or default mitigation measure. Non-access-reducing measures must be exhausted first."*

3. **Mandatory Reopening Triggers and Time Limits**
   Any temporary restriction must include:
   - written findings tied to site-specific data;
   - a defined geographic scope;
   - a maximum duration; and
   - **objective reopening criteria**.

   Absent these safeguards, "temporary" restrictions inevitably become permanent through administrative inertia.

4. **Lock CA-50 Into Measurable Performance Commitments**
   If CA-50 is the justification for selecting Alternative 1, then the Final HCP must require:
   - a schedule for implementation;
   - acreage targets; and
   - public reporting demonstrating actual conversion of restricted areas to open recreation use.

5. **ESA Compliance Must Not Become a Backdoor to SVRA Closure**
   The Draft HCP correctly recognizes that ESA compliance is achieved through **avoidance, minimization, mitigation, monitoring, and adaptive management** - not elimination of use. The Final HCP must clarify that:
   - seasonal fencing, predator management, education, and enforcement are preferred tools
   - recreation access restrictions require affirmative scientific justification tied to exceedance of authorized take.

O2-4

**PM10 Claims Lack Empirical Correlation with OHV Recreation and Do Not Support Access-Reducing Alternatives**

The Recirculated DEIR repeatedly references PM10 concerns and the San Luis Obispo Air Pollution Control District's (SLOAPCD) Stipulated Order of Abatement (SOA) as a basis for restricting OHV recreation and camping access at Oceano Dunes SVRA (RDEIR §1.3; §4.2 Air Quality; §4.3 Biological Resources; Chapter 5 Alternatives). However, **neither the RDEIR nor the Draft HCP establishes a scientifically defensible causal relationship between OHV recreation and PM10 exceedances**, and the administrative record instead supports the opposite conclusion: **wind-driven natural processes dominate PM10 emissions in the Oceano Dunes system**.

A. **Dominant Role of Wind-Driven Sand Transport**

Peer-reviewed research consistently finds that **aeolian entrainment of emissive sand during high-wind events is the primary driver of PM10 in coastal dune environments**, independent of vehicular activity. Gillies et al. (2005) and Washington et al. (2003) demonstrate that PM10 emissions increase exponentially with wind speed once threshold friction velocities are exceeded, a condition common at Oceano Dunes due to regional meteorology and dune morphology. These findings are directly relevant to the DEIR's air-quality analysis, which acknowledges that PM10 exceedances frequently coincide with strong onshore wind events (RDEIR §4.2).

O2-5

Importantly, these exceedances occur **regardless of OHV activity levels**, including periods when vehicle access is restricted or absent. This directly undermines the implicit assumption… which is repeated throughout the DEIR alternatives discussion… that reductions in OHV use will produce commensurate reductions in PM10 concentrations.

B. **Scripps Institution of Oceanography Findings and the Administrative Record**

The Scripps Institution of Oceanography Interim Year 3 Report, commissioned by California State Parks, provides site-specific confirmation of the broader scientific literature. The Scripps report concludes that **regional wind fields, dune surface conditions, and natural sand transport processes are the dominant contributors to PM10 at Oceano Dunes**, and that the relationship between human activity and measured PM10 concentrations is weak, variable, and often statistically insignificant (Scripps Institution of Oceanography, 2023).

Critically, the Scripps report documents that:

- Peak PM10 concentrations are strongly associated with **meteorological conditions**, not with recreational intensity;
- Emissive source areas extend well beyond OHV riding corridors; and

- Changes in OHV access do not consistently translate into measurable reductions in downwind PM10 concentrations.

These findings are directly relevant to the DEIR's reliance on the SOA as justification for access-reducing alternatives (DEIR §1.3; Chapter 5). **Yet the DEIR does not reconcile its proposed recreation restrictions with the Scripps findings, nor does it explain why measures shown to have little effect on PM10 concentrations are nonetheless treated as necessary or effective mitigation. This omission renders the RDEIR's air-quality rationale for Alternatives 3 and 4 analytically deficient under CEQA.**

### C. Ineffectiveness of Vehicle Restrictions as PM10 Mitigation

Agency and consultant analyses further confirm that **vehicle restrictions have not produced consistent or measurable PM10 reductions attributable to human activity**. Countess Environmental (2019), evaluating monitoring data associated with the SOA, found no reliable correlation between OHV use levels and PM10 exceedances once wind conditions were accounted for. The Draft HCP similarly acknowledges that PM10 management relies on a suite of measures - vegetation, surface stabilization, and monitoring - rather than recreation controls alone (Draft HCP Chapter 2; Appendix B).

Despite this, the DEIR alternatives analysis repeatedly treats access reduction as a primary response to PM10 concerns (DEIR Chapter 5), without demonstrating effectiveness or necessity. **CEQA requires more than speculative benefit; it requires substantial evidence that a mitigation measure will actually reduce the impact it purports to address** (CEQA Guidelines §§15064, 15126.4). **That showing has not been made here.** O2-5

### D. Legal Implications: PM10 Cannot Justify Permanent or Expanding Closures

**Absent an empirical causal link, PM10 compliance cannot lawfully justify permanent or expanding recreation closures, particularly within a legislatively designated State Vehicular Recreation Area.** Courts have rejected mitigation rationales based on unsupported assumptions or tenuous correlations (*Communities for a Better Environment v. SCAQMD*, 48 Cal. 4th 310). Where an agency relies on air-quality impacts to restrict public use, it must demonstrate that the restriction will actually reduce the impact… this standard has not met by the DEIR's treatment of PM10.
Moreover, the ESA and the Draft HCP do not require elimination of recreation to address air quality. **The HCP's conservation strategy is grounded in avoidance, minimization, mitigation, and adaptive management, not exclusion** (Draft HCP Chapter 1; Chapter 6). **Using PM10 concerns as a backdoor justification for access reduction therefore exceeds the scope of both ESA compliance and the HCP's stated objectives.**

### E. Connection to Species Conservation Success and Balanced Management

The lack of correlation between OHV recreation and PM10 emissions reinforces the broader conclusion, which is documented throughout the HCP and DEIR, that balanced management works at Oceano Dunes. Just as species conservation success (e.g., western snowy plover recovery) has been achieved through targeted, science-based measures rather than wholesale exclusion (Draft HCP Chapter 3; RDEIR §4.3), **air-quality management must likewise focus on measures that address actual drivers of emissions, not symbolic restrictions on recreation.**

In both contexts, the administrative record demonstrates that **structural closures and access caps are blunt instruments unsupported by empirical evidence**. The RDEIR and HCP instead support an approach that retains OHV and camping access while applying focused management tools aligned with best available science. **Alternatives predicated on PM10-driven recreation reduction therefore lack both scientific and legal foundation.**

O2-5

**Alternatives 3 and 4 Are Overbearing and Legally Non-Compliant**

Alternative 3 imposes permanent, year-round closures that:

- exceed what is necessary for species protection;
- conflict with the SVRA's statutory purpose; and
- rely on precaution rather than evidence.

Permanent exclosures are not required by the ESA where seasonal and targeted measures are effective, as demonstrated by decades of snowy plover recovery at ODSVRA.

Alternative 4 imposes reduced vehicle and camping limits, and thus functions as a **de facto rationing scheme** that restricts who may access public land rather than managing impacts. Such caps:

- disproportionately harm families, low-income users, and people with disabilities;
- shift impacts to surrounding communities; and
- lack a demonstrated nexus to biological necessity.

O2-6

Neither alternative satisfies CEQA's requirement to adopt the **least environmentally damaging feasible alternative** that still meets project objectives.

**Alternative 2 is Merely an Access-Preservation Fallback - and Still Deficient**

Cal4Wheel and ASA recognize Alternative 2 as a potential fallback if the agencies refuse to adopt Alternative 1. However:

- Alternative 2 **does not expand access** as written.
- It still relies on overly conservative disturbance assumptions.
- It lacks enforceable protections against incremental access loss.

Alternative 2 is not a legally defensible option for adoption. Comprehensive revisions are required, that include (to start, but not limited to) **upgrades with the same sideboards** described above for Alternative 1. Without them, Alternative 2 also results in overbearing and legally unsupported recreation restrictions.

**Species Conservation Success at Oceano Dunes Demonstrates Balanced Management Works**

*(Substantial Evidence Supporting Alternative 1 and Rejecting Closure-Based Alternatives)*

O2-7

The biological record summarized in the Draft **HCP** and the Recirculated DEIR demonstrates that species conservation success at Oceano Dunes SVRA has occurred under a management regime that retained OHV recreation and camping, rather than one based on wholesale exclusion. This record provides substantial evidence that balanced, targeted management… not permanent closures or access caps… is both effective and legally sufficient to meet conservation obligations.

### A. Western Snowy Plover (SNPL)

The western snowy plover provides the most directly relevant and well-documented case study. The Draft HCP acknowledges that snowy plover nesting success and fledgling production at Oceano Dunes have improved over time through seasonal protections, symbolic fencing, predator management, monitoring, and public compliance, while OHV recreation continued within designated areas (Draft HCP, Chapter 3 – Covered Species; Appendix C – Biological Data and Monitoring Results).

The RDEIR similarly recognizes that plover management at ODSVRA relies on temporal and spatial avoidance measures, not permanent exclusion, and that these measures have been implemented concurrently with recreational use (RDEIR, Section 4.3 Biological Resources; RDEIR Appendix BIO).

Peer-reviewed literature cited in the Draft HCP supports these conclusions. Page et al. (2009) and Lafferty et al. (2006) demonstrate that plover reproductive success is primarily driven by predation pressure, habitat conditions, and management effectiveness, not by the mere presence of recreation. The Draft HCP's reliance on these management tools is therefore consistent with the best available science and is already producing measurable conservation benefits at Oceano Dunes.

**Importantly, nothing in the Draft HCP or RDEIR establishes that expanded, carefully managed OHV access - such as that contemplated under CA-50 in Alternative 1 - would undermine these conservation outcomes**, provided seasonal and site-specific protections remain in place (RDEIR, Chapter 3 Project Description; Chapter 5 Alternatives).

O2-7

### B. California Least Tern (CLTE)

For the California least tern, the Draft HCP explains that nesting success is driven by predator management, habitat quality, and seasonal buffering, rather than generalized public access restrictions (Draft HCP, Chapter 3; Appendix C). The RDEIR similarly identifies targeted management measures as the primary mitigation approach for tern impacts, not permanent area closures (RDEIR, Section 4.3).

This approach is consistent with statewide monitoring and recovery literature, which shows least tern colonies persisting and expanding in areas with adjacent recreation where disturbance is managed during the nesting season (Marschalek, 2014; USFWS, 2020). **Neither the Draft HCP nor the RDEIR presents evidence that year-round closures or vehicle caps are biologically necessary for tern conservation at Oceano Dunes.**

### C. Tidewater Goby (TG)

For tidewater goby, the Draft HCP and Appendices emphasize that hydrology, lagoon connectivity, and water quality are the dominant factors influencing population persistence (Draft HCP, Chapter 3; Appendix D – Aquatic Resources). The RDEIR likewise frames impacts and mitigation in terms of habitat condition and aquatic system management, rather than recreational use intensity (RDEIR, Section 4.3).

Swift et al. (2011), cited in the HCP appendices, conclude that goby populations are not limited by adjacent upland recreation where estuarine processes are intact. **The administrative record therefore does not support claims that OHV recreation or camping reductions are necessary to protect this species.**

### D. California Red-Legged Frog (CRLF)

The Draft HCP relies on the U.S. Fish and Wildlife Service's Recovery Plan for the California red-legged frog, which identifies habitat availability, hydrologic stability, and invasive species management as primary recovery drivers (Draft HCP, Chapter 3; Appendix C; USFWS, 2002). The RDEIR similarly evaluates CRLF impacts through a habitat-based lens and does not identify OHV recreation as a primary stressor requiring elimination (RDEIR, Section 4.3).

This reinforces that **site-specific protections and monitoring, not broad access restrictions, are the appropriate conservation tools**.

O2-7

### E. Southwestern Pond Turtle (SWPT) and Western Spadefoot (WSF)

For southwestern pond turtle and western spadefoot, the Draft HCP and Appendices emphasize localized habitat features, breeding sites, and environmental conditions as the key conservation variables (Draft HCP, Chapter 3; Appendix C). Bury and Germano (2008) and Morey (2005), both relied upon in the HCP's literature base, document successful coexistence with managed human use where nesting, basking, and breeding areas are protected through targeted measures.

Again, **neither the Draft HCP nor the RDEIR presents substantial evidence that permanent closures or access caps are biologically required for the SWPT and WSF species at Oceano Dunes**.

## Legal and Policy Implications for Alternatives Analysis

Taken together, the Draft HCP and Recirculated DEIR establish a clear factual predicate: species conservation success at Oceano Dunes has been achieved through adaptive, targeted management in a recreation-inclusive landscape. This record undermines the premise of Alternatives 3 and 4, which rely on permanent exclosures and vehicle limits that exceed what is necessary to avoid, minimize, or mitigate impacts.

Under CEQA, alternatives that impose greater restrictions than required to meet project objectives - particularly where less restrictive, feasible measures have proven effective - are legally deficient (CEQA Guidelines §15126.6). Likewise, the ESA does not require elimination of lawful public use where take can be managed through an HCP (16 U.S.C. §1539; *Friends of Endangered Species v. Jantzen*, 760 F.2d 976).

O2-8

Accordingly, **the administrative record supports Alternative 1… modified to include enforceable implementation sideboards… as the only alternative that both advances conservation and fulfills the statutory purpose of ODSVRA, while demonstrating that balanced management is not only feasible, but already successful.**

## Alternatives Summary

Alternative 1 is the only legally defensible alternative, and the only alternative capable of protecting and expanding OHV and camping access at Oceano Dunes SVRA. However, that outcome is not automatic. Without enforceable sideboards, Alternative 1 risks devolving into another pathway for access erosion.

**Cal4Wheel and ASA therefore urge the agencies to:**

1. **Select Alternative 1;**
2. **Modify it to include enforceable no-net-loss, no-mitigation-by-closure, and reopening-trigger requirements; and**
3. **Reject Alternatives 3 and 4 as inconsistent with law, science, and the SVRA's legislative mandate.**

O2-8

Balanced management is not only legally required… it has already been proven to work at Oceano Dunes. The Final EIR and HCP must reflect that reality.

## FALSE ASSERTION OF GOVERNMENT OWNERSHIP OF STATE- AND FEDERALLY-MANAGED PUBLIC LANDS

As noted above, State Park lands in California are public lands, meaning they are owned by the citizens of the state as a collective. The California Department of Parks and Recreation (California State Parks) is the managing authority, but it does not "own" the land in a private sense. Rather, the department manages these lands on behalf of the public, ensuring they are protected, conserved, and available for public use under the framework of state law.

The California Public Resources Code (Sections 5001–5077) defines the roles and responsibilities of the State Parks Department, emphasizing its duty to manage the parks for public benefit, preservation, and enjoyment. This aligns with the concept that state parks are public assets held in trust for current and future generations.

Additionally, state parks in California are classified under the broader concept of public trust lands, which means they are managed in the public interest, reflecting shared ownership by all citizens.In essence, the land belongs to the people of California, with the State Parks Department acting as the steward responsible for its preservation and management.

O2-9

Thus, we are alarmed and disappointed that the DEIR, HCP and related Appendices are riddled with statements asserting that the CA State Parks "owns" lands contained within the Oceano Dunes District and ODSVRA, which is all in fact, CA State Parks managed public land. In order to protect the vested rights and ownership that American citizens possess through the endowment of our treasured public lands, and to ensure accurate language that aligns with PRC and the US Constitution, each of these false statements within the DEIR, HCP, and Appendices must be corrected. Erroneous references to state or federal ownership of public lands are found in the following:

- Recirculated DEIR, Chapter 2, Project Description, page 2-1:
  - *"The HCP area lands are owned by CDPR…"*
  - This must be corrected to state "…The HCP area lands are managed by CDPR…"
- Recirculated DEIR, Chapter 2, Project Description, 2.2 Background of Park Operations, 2.2.1 Mission of California State Parks, paragraph 4, page 2-4:
  - "*The mission of the OHMVR Division is to provide leadership statewide in the area of OHV recreation; to acquire, develop, and operate state-owned vehicular recreation areas…"*
  - This must be corrected to state "…state-managed vehicular recreation areas…

- Recirculated DEIR, Chapter 4, Land Use Plans and Policies, 4.1 Regulatory Setting, paragraph 1, page 4-1:
    - *"The proposed new activities would be conducted on state-owned and state-operated land that, with the exception of coastal development permitting typically conducted through local agencies, is not subject to local land use restrictions and zoning regulations."*
    - This must be corrected to state… "…conducted on state-managed public land that…
- Revised Habitat Conservation Plan, Executive Summary, Geographic Scope, paragraph 3, page x:
    - *"The HCP area lands are owned by CDPR…"*
    - This must be corrected to state: "The HCP area lands are public lands that are managed by CDPR…"
- Revised Habitat Conservation Plan, Chapter 3, Environmental Setting / Biological Resources, 3.3.1.3.1 Critical Habitat, paragraph 2, page 3-19:
    - *"…Guadalupe-Nipomo Dunes National Wildlife Refuge, which is owned and managed by USFWS…"*
    - This must be corrected to state: "…Guadalupe-Nipomo Dunes National Wildlife Refuge, an area of public land that is managed by USFWS…"

O2-9

Please note, there may be additional erroneous references to state or federal ownership of public lands in other components of the DEIR, HCP, Appendices, and supporting documents. The items in need of correction as noted above are not intended to be a comprehensive list of all such references. As additional erroneous references may be found, they must also be corrected.

**Again, it is critical for CA State Parks to bear in mind that state and federal agencies do not own our public lands. State and federally managed lands are a part of the public endowment, as all public lands are owned by the citizens of the USA (the public); CA State Parks, the Forest Service, the BLM, the Fish & Wildlife Service, and all other state and federal agencies are merely contracted to manage those lands within the defined scope of limited authority that is granted by PRC, the US Congress, and the US Constitution. Thus, we assert the exigence that CA State Parks correct each item of erroneous language that states implicitly or explicitly that any state or federal agency owns our public lands.**

## CLOSING

We would like to close by once again calling your attention to the vested interest that Cal4Wheel, ASA, other members of the outdoor recreation sector, local governments, and the general public have as vested stakeholders of CA State Parks Oceano Dunes District and ODSVRA. We encourage CA State Parks to uphold their alignment with PRC, the CA State Parks mission and operating guidelines, and CA State Parks responsibility to manage our public lands within the scope of Constitutionally-granted boundaries as contracted managers of our nation's public lands - the citizenry's prized national heritage.

O2-10

California Four Wheel Drive Association and American Sand Association would like to be considered interested publics for the Recirculated DEIR and HCP. Information can be sent to the following address and email address:


Rose Winn
California Four Wheel Drive Association
8120 36th Avenue
Sacramento, CA 95824
rwinn@cal4nrc.com


Sincerely,


Rose Winn
Natural Resources Consultant
California Four Wheel Drive Association

Dave Kuskie
Executive Director
American Sand Association


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# California Off-Road Vehicle Association

January 14, 2026

CORVA Public Statement ICP and HCP – Oceano Dunes SVRA

On behalf of the California Off-Road Vehicle Association (CORVA), we respectfully submit this public comment regarding the ongoing management of Oceano Dunes State Vehicular Recreation Area (SVRA) and the protection of the western snowy plover.

Oceano Dunes SVRA is far more than a recreational site. It is a cornerstone of California's multiple-use public-lands framework and one of the last remaining coastal locations where lawful, family-oriented motorized recreation is permitted. The Legislature's designation of this area as a State Vehicular Recreation Area reflects a clear intent that recreation and resource protection coexist through active management—not exclusion.

Oceano Dunes lies within the Guadalupe–Nipomo Dunes complex, one of the largest intact coastal dune systems in California. For generations, this landscape has supported both public recreation and sensitive coastal species, including the snowy plover. These uses are not mutually exclusive. They have coexisted for decades through intentional, on-the-ground management guided by monitoring, data, and adaptive decision-making.

California State Parks and the Off-Highway Motor Vehicle Recreation (OHMVR) Division have invested millions of dollars at Oceano Dunes in species monitoring, seasonal and permanent fencing, predator management, public education, enforcement, habitat restoration, and dust mitigation. This level of active management is comparable to—and in many cases exceeds—that employed at non-motorized coastal State Beaches that also support snowy plover habitat. The presence of off-highway vehicles alone is not determinative of species outcomes.

O3-1

Snowy plovers face a range of pressures common to all California coastal beaches, including human presence, predators, storm events, shifting habitat conditions, and broader environmental dynamics. Successful protection depends on adaptive, science-based management that addresses these factors comprehensively. Blanket closures that eliminate one form of recreation without addressing the full spectrum of stressors do not constitute sound conservation strategy.

Despite extensive mitigation efforts, Oceano Dunes has faced sustained closure pressure driven largely by litigation strategies that seek to eliminate motorized recreation rather than improve measurable biological outcomes. This approach has prolonged conflict, diverted resources away from on-the-ground solutions, and undermined confidence in balanced land management.


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# California Off-Road Vehicle Association

The recent court ruling underscores the need for a durable, lawful, and scientifically defensible path forward. CORVA views the Incidental Take Permit (ITP) and Habitat Conservation Plan (HCP) process as a critical opportunity to establish regulatory certainty, align management actions with clear and measurable biological objectives, and ensure continued public access while listed species are protected and recovered.

CORVA respectfully urges California State Parks and the OHMVR Division to continue advancing solutions grounded in data, adaptive management, and transparent performance metrics. We ask the Department to evaluate Oceano Dunes within the broader context of coastal plover management statewide and to recognize that active management—not closure—offers the greatest opportunity for long-term success for both species conservation and public recreation.

O3-1

California's public lands were not set aside for exclusion, but for thoughtful, balanced use. Oceano Dunes can and must remain a place where environmental protection and responsible motorized recreation coexist under a science-based management framework.

Thank you for the opportunity to provide comments and for your continued efforts to balance public access with environmental stewardship at Oceano Dunes SVRA.

Sincerely,

Mike McGarity

President

"Protecting Public Land *FOR* the PeopleNot *FROM* the People"
**1500 W. El Camino Ave. #352, Sacramento · California · 95833**
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CENTER for BIOLOGICAL DIVERSITY Because life is good.

***Via Regulations.gov, Docket No. FWS–R8–ES–2025–0143 with References and Attachments And Via Email to*** comment@oceanoduneshcp.com.

January 23, 2026

Public Comments Processing
Attn: Docket No. FWS–R8–ES–2025–0143
U.S. Fish and Wildlife Service; MS: PRB/3W;
5275 Leesburg Pike
Falls Church, VA 22041–3803.
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***Re: Comments on 2025 Draft Habitat Conservation Plan and Recirculated Draft Environmental Assessment for the California Department of Parks and Recreation, Oceano Dunes District, 90 Fed. Reg. 52993-94 (November 24, 2025); and the Recirculated Draft Environmental Impact Report (EIR) (SCH# 2018011012)***

Dear Field Supervisor Darst and Senior Environmental Scientist Glick:

These comments are timely submitted on behalf of the Center for Biological Diversity (the "Center") and its members, regarding the 2025 Draft Habitat Conservation Plan ("HCP"), the Recirculated Draft Environmental Assessment for the California Department of Parks and Recreation ("State Parks" or "CDPR"), Oceano Dunes District, San Luis Obispo County, California noticed for comment by the U.S. Fish and Wildlife Service ("FWS"), 90 Fed. Reg. 52993-94 (November 24, 2025), and the Recirculated Draft Environmental Impact Report ("EIR") (SCH# 2018011012). The Center submitted comments to FWS and California Department of Parks and Recreation on earlier iterations of the draft HCP, and draft EA as well as other related documents in 2018, 2019, 2020, and 2021, those comments are attached and incorporated herein by reference.

After allowing unpermitted take of listed species at Oceano Dunes for decades from motorized vehicles and other activities,[1] State Parks is proposing to use the HCP process to decrease existing conservation measures and increase impacts to listed species from off-road motorized use at Oceano Dunes and in surrounding areas. This proposal will undermine the decades of conservation efforts and investments of time and funds by state, local, and federal agencies and both survival and recovery of listed species in violation of the Endangered Species Act ("ESA"). *See* 16 U.S.C. §§ 1531(b) (purposes of the ESA), 1539(a)(2)(B)(iv) (mandate that the proposed taking "will not appreciably reduce the likelihood of the survival and recovery of the species in the wild").

As discussed in more detail below, while there have been a few small changes in the 2025 draft HCP from the earlier version that was circulated for public comment in 2020, overall the 2025 draft HCP still fails to meet the standards required under the Endangered Species Act section 10(a)(1)(B). As a result, the draft HCP cannot support the issuance of an Incidental Take Permit ("ITP") by FWS.

Because State Parks fails to acknowledge the extent to which the existing and proposed activities take listed species and the effect on those listed species, the draft HCP also fails to minimize and mitigate the impacts of the incidental take coverage that is sought. The draft HCP also provides insufficient monitoring designed to assess the actual take that occurs.

As to the environmental review, the Recirculated Draft EA provides insufficient identification and analysis of the significant impacts of the all of the activities that would be authorized under the HCP and ITP including significant take in the form of harassment of listed species, utilizes an unlawful baseline, and fails to consider a reasonable range of alternatives; as a result of these and other shortcomings, it fails to comply with NEPA and an EIS should be prepared. The Recirculated Draft EIR also utilizes an unlawful environmental setting or no action alternative, fails to consider alternatives that would avoid significant impacts (as required under CEQA), and fails to adequately disclose, analyze, and mitigate significant impacts to biological resources and ESHA. For these reasons and others described herein, the Recirculated Draft EIR is inadequate. Further, State Park's failure to move forward with the long-overdue need for a NCCP under California law means that the ongoing activities that State Parks seeks coverage for are unlawful and that the proposed project, the 2025 Draft HCP, does not and will not comply with California law.[2]

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[1] *See Order* Granting Pl.'s Mot. for Summ. J., *Center for Biological Diversity v. Quintero et al.,* Case No. 2:20-cv-09965-AH, Dkt. No. 64 (C.D. Cal. Nov. 20, 2025) (holding that State Parks' current authorization of motorized vehicle use at Oceano Dunes SVRA results in the "take" of snowy plovers in violation of the ESA).

[2] The Recirculated Draft EIR states: "In a separate action, CDPR intends to prepare a Natural Community Conservation Plan (NCCP) in support of an application to California Department of Fish and Wildlife (CDFW) for issuance of a permit authorizing incidental take of state-listed animal and plant species under California Fish and Game Code sections 2800 et seq., including section 2835," (Id. at 1-1) and that "CDPR is seeking take authorization from CDFW"

For these and other reasons detailed below, we urge FWS not to approve the HCP and not to issue an Incidental Take Permit to CDPR.

## I. COMMENTS ON 2025 DRAFT HABITAT CONSERVATION PLAN (HCP) FOR THE OCEANO DUNES DISTRICT

### A. Legal Background

The HCP must ensure not merely the continued survival of covered species, but also the recovery of these species. "Conserve" as defined in the Federal Endangered Species Act ("ESA") includes both survival and recovery: "the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary." (16 U.S.C. § 1532(3).) Thus, the HCP must contain specific measures to "conserve," or provide for the recovery of, the species. (S*w. Ctr. for Biological Diversity v. Bartel*, 470 F. Supp. 2d 1118, 1128 (S.D. Cal 2006); *Sierra Club. v. Babbitt*, 15 F. Supp. 2d 1274, 1278 n.3 (S.D. Ala. 1998); *see also Gifford Pinchot Task Force v. United States Fish & Wildlife Serv*., 378 F.3d 1059, 1070 (9th Cir. 2004) ("the ESA was enacted not merely to forestall the extinction of species (i.e., promote a species survival), but to allow a species to recover to the point where it may be delisted.").) At a minimum, the ESA and implementing regulations require all HCPs to include the following: (1) a complete description of the activity sought to be authorized; (2) names of the species sought to be covered by the permit, including the number, age and sex of the species, if known; (3) the impact which will likely result from such taking; (4) what steps the applicant will take to monitor, minimize, and mitigate those impacts; (5) the funding that will be available to implement such monitoring, minimization, and mitigation activities; (6) the procedures to be used to deal with unforeseen circumstances; and (7) what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized. (16 U.S.C. § 1539(a)(2)(A)(i)-(iv); 50 C.F.R. §§ 17.22, 17.32.) FWS cannot issue an ITP if the HCP does not contain this information. (16 U.S.C. § 1539(a)(2)(A).) O4-1

Upon reviewing a HCP and before permit issuance, the FWS must find that (i) the taking will be incidental; (ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking; (iii) the applicant will ensure that adequate funding for the plan will be provided; (iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (v) any other measures FWS requires will be met. (16 U.S.C. § 1539(a)(2)(B); 50 C.F.R. §§ 17.22, 17.32.)

The Draft HCP seeks to cover four listed animal species, (western snowy plover, California least tern, California red-legged frog, tidewater goby), six listed plant species (marsh sandwort, La Graciosa thistle, Surf Thistle, Beach Spectaclepod, Nipomo Mesa lupine, and Gambel's watercress), and two species proposed for listing (Southwestern pond turtle and western spadefoot toad).

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separately." (Id. at 6-54) However, no public notice has been provided for that process which is decades overdue.

The project area at Oceano Dunes includes designated critical habitat for the western snowy plover, tidewater goby, La Graciosa thistle, and south-central California Coast steelhead.[3] The Ninth Circuit Court of Appeals explained that the purpose of critical habitat designations is not merely to ensure the species' survival, but also to "carve out territory" that is "essential for the species' recovery." (*Gifford Pinchot Task Force v. United States Fish & Wildlife Serv*. 378 F.3d 1059, 1070 (9th Cir. 2004) (emphasis added). Under the ESA "conservation and survival as distinct, though complementary, goals, and the requirement to preserve critical habitat is designed to promote both conservation and survival." (*Id*.) Here, the HCP must protect critical habitat and other habitat currently used by the covered species, and also protect habitat that could be used by the covered species in the future as these populations recover and cannot appreciably reduce the likelihood of survival or recovery of the covered species and the FWS biological opinion must address the impacts to the affected critical habitats. O4-2

**B. Minimal changes from 2020 to 2025 Draft HCP**

The 2025 Draft HCP continues to propose dramatic reductions in protected nesting areas for SNPL and CLTE, specifically the reduction of the Boneyard Exclosure and 6 Exclosure to open additional area for off-roading during the SNPL and CLTE breeding season and to increase motorized access to Oso Flaco Lake. O4-3

***East Boneyard Exclosure Eliminated***

Under the 2025 Draft HCP, State Parks would no longer fence off the East Boneyard Exclosure (44-49 acres). (2025 Draft HCP at 2-44 to 2-45). The 2025 draft HCP provided an update on the number of SNPL nests in the Boneyard area. "Although the Boneyard Exclosure once played a more significant role in CLTE and SNPL nesting, it no longer receives the number of nests it did prior to 2005. In fact, CLTE have not nested in the East Boneyard Exclosure at all since 2005, and only 11 SNPL nests have been established in the East Boneyard Exclosure during this time." (2025 Draft HCP at 2-44 (emphasis added)). This shows continued and potentially increased SNPL nesting in the Boneyard with 4 additional SNPL nests established in the last 5 years– the 2020 draft indicated only seven nests in the 15 years from 2005 to 2020 (2020 Draft HCP at 4-47). The 2025 Draft HCP does not address this consistent SNPL nesting use in the East Boneyard and instead attempts to downplay the value of this area for nesting SNPL. O4-4

***Eliminates Reliance on PWP***

Relatedly, the 2025 Draft HCP eliminates reliance on CDPR's previously proposed Public Works Plan (PWP). "The PWP process is presently on hold, and CDPR has no current plans to move the draft PWP forward." 2025 Draft HCP at 2-49. O4-5

[3] The latter two listed species are within the jurisdiction of NOAA and are not included a covered species in the 2025 Draft HCP.

> As individual projects are brought forward for implementation, they will be assessed for incorporation into the HCP via amendment. Some of the smaller PWP projects could possibly be incorporated into the HCP as special projects (CA-49; section 2.2.5.10) and not require an amendment. The limited trail riding area is already included as a covered activity (CA-42; section 2.2.5.3).

(2025 Draft HCP at 2-49.) In describing the impacts of this additional motorized activity in the covered activity section, the 2025 Draft HCP provides little information about the impacts to covered species.

> 4.3.1.5.3. Limited Trail Riding Area (CA-42)
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> The limited trail riding area will be mostly located outside the Exclosures, with only a small area in East Boneyard, and within tertiary SNPL habitat (Map 8). Vehicles riding in this area are not expected to affect SNPL nests, since SNPL are not expected to nest in tertiary habitat and thus would not be affected. Similarly, SNPL typically forage and/or roost along the shoreline and not within the trail riding area; therefore, effects on foraging and roosting SNPL are not expected.

O4-5

(*Id.* at 4-44). The inclusion of limited trail riding in the East Boneyard area as a covered activity (2.2.5.3, *id*. at 2-39) increases impacts over the current use but the 2025 Draft HCP (and EA) fail to account for this, brushing the increased impacts away as "not expected."

Moreover, adding limited trail riding in the East Boneyard will increase impacts to Oso Flaco Lake and the many species that depend on it in addition to the increased impacts to SNPL nesting (as discussed below at Sections F & H, *infra*). Because even the "limited" trail riding in the East Boneyard will reduce protected habitat for the SNPL (and other species) and may increase harm including flushing, injury and mortality from motorized activities, that the Draft HCP fails to address, the FWS should not approve inclusion of the trail riding or the elimination of the East Boneyard exclosure in the.

***Future Reduction of 6 Exclosure Remains Unclear***

Potential Reductions in 6 Exclosure are not clearly explained and the impacts to covered species are not addressed.

The 2025 Draft HCP states that:

O4-6

> "the 6 Exclosure may be reduced in approximately 328-foot (100-meter) increments from north to south, or CDPR may implement alternative incremental reductions— such as by adjusting the eastern fence—to better suit SNPL and CLTE management. CDPR will work with the USFWS and the appropriate stakeholders to develop a 6 Exclosure reduction that achieves additional riding

area while protecting nesting shorebirds (see section 5.2.3 for a more detailed explanation of the criteria for reducing the exclosed area). If the criteria are not met for either species, the 6 Exclosure will be restored to its original extent in the following breeding season in coordination with the USFWS. Any decisions to restore the 6 Exclosure fence to ensure the criteria are met will be based on the best available science and could include additional management actions (e.g., predator management) in addition to restoring the fence size."

*Id*. at 2-45. The Criteria provided in section 5.2.3 (*Id.* at 5-9 to 5-11), have not been met for CLTE. Moreover, the use of these criteria to reduce protections and increase motorized activities in this habitat makes little sense because it is the exclosures that have allowed the breeding and population numbers to increase --- taking away those protections will cause additional harm and take of the species that is not currently occurring. This is another way in which the design of this draft HCP fails to meet the requirements of the ESA which requires reliance on the best available science for the HCP actions at the outset. O4-6

Rather than prioritize conservation of covered species, the 2025 Draft HCP proposes to allow CDPR to reduce protections in 6 Exclosure in direct opposition to the best available science that is available now which shows that the exclosure is providing important protections for SNPL and CLTE (and contrary to both CDFW's and CCC's expert opinions). And to make matters worse, later, only if the impacts from additional motorized use in this important habitat are too great, CDPR could potentially reverse course and only then consider the "best available science"—this is the polar opposite of the precautionary principle. Ignore existing science and allow harms first, maybe correct later; rather than, protect first, carefully consider increased impacts after additional science is collected and considered.

***Changes in Level and Type of Anticipated Take From Covered Activities***

Another change in the 2025 Draft HCP is changes in the levels and type of anticipated take of plovers and terns, most importantly the exclusion of harm as well as all take by harassment which is largely due to OHV activities. (2025 Draft HCP at 4-62 (SNPL – anticipated take of 40 adults and/or juveniles; 80 chicks, 80 eggs over a 5-year period excluding all take by harassment); *id*. at 4-112 (CLTE, take of 15 adults/juv, 15 chicks and 22 eggs over a 5 year period excluding all take by harassment).[4] O4-7

The exclusion of all take due to "harassment" from the anticipated take under the Draft HCP is justified based on the following statement: "Pursuant to the Principal Deputy Director's Memorandum (USFWS 2018a), harassment is not a form of take permitted under section

[4] The 2020 Draft HCP anticipated similar levels of take from covered activities but did not clearly exclude take by harassment and stated that the numbers included "harm." 2020 Draft HCP at 4-60, (SNPL 45 adults and/or juveniles; 88 chicks; 79 eggs over a 5-year period); *id*. at 4-109 (CLTE, 10 adults and/or juveniles, 24 chicks, 22 eggs over a 5-year period).

10(a)(1)(B) since it is not incidental take and is instead an intentional or negligent act." (2025 HCP at 1-6; 2020 Draft HCP at 1-5). However, the 2025 Draft HCP fails to note that the 2018 Memorandum was withdrawn. Rescission of the 2018 Principal Deputy Director Memorandum, FWS/AES/067974 (April 22, 2024). As the Recission explained, an intentional act—e.g. OHV riding-- which results in a likelihood of injury to listed species is harassment and a part of "incidental take" under the ESA. *See* 50 C.F.R. § 17.3. The purpose or intent of the activity need not be to harm listed species for harassment to occur, only that the activity results in a likelihood of injury to the listed species. As a recent district court ruling explained in detail:

> The ESA does not define "harass"; FWS regulations define it as "an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering."[350] [50 C.F.R. § 17.3.] In evaluating a challenge based on a regulation, courts first determine whether a regulation is "genuinely ambiguous," by "carefully consider[ing] the text, structure, history, and purpose" of the regulation.[351] [*Kisor v. Wilkie*, 139 S. Ct. 2400, 2415, 204 L. Ed. 2d 841 (2019) (plurality opinion) (citation and internal quotation marks omitted).] If the regulation is not ambiguous, "[t]he regulation then just means what it means—and the court must give it effect, as the court would any law."[352] [*Id*.]
>
> Plaintiffs are correct that the definition of "harass" that FWS applied to non-denning polar bears is inconsistent with the regulation. The regulation's text is unambiguous. "Harass" means an "intentional or negligent act or omission which creates [a] likelihood of injury,"[353] [50 C.F.R. § 17.3.] not an intentional or negligent act or omission which *intentionally or negligently* creates a likelihood of injury. "Intentional or negligent" modifies "act," not "likelihood of injury."[354] [*See id*.]
>
> > This interpretation is bolstered by the legislative history of the ESA. The House Report [on the ESA] underscored the breadth of the "take" definition by noting that it included "harassment, whether intentional or not." The Report explained that the definition "would allow, for example, the Secretary to regulate or prohibit the activities of birdwatchers where the effect of those activities might disturb the birds and make it difficult for them to hatch or raise their young." These comments . . . support the Secretary's interpretation that the term "take" in § 9 reached far more than the deliberate actions of hunters and trappers.[355] [*Babbitt v. Sweet Home Chapter of Cmtys. for a Great Or*., 515 U.S. 687, 704-05, 115 S. Ct. 2407, 132 L. Ed. 2d 597 (1995) (emphasis in original) (quoting H.R. Rep. No. 93-412, at 11 (1973)).]

O4-7

*Sovereign Iñupiat for a Living Arctic v. BLM*, 701 F. Supp. 3d 862, 910-11 (D. Alaska 2023) (reversed in part on other grounds by *Ctr. for Biological Diversity v. United States BLM*, 141 F.4th 976 (9th Cir. 2025)).

Thus, if the impacts to listed species from *intentional* "harassment" could be properly ignored, the Draft HCP cannot ignore the unintentional harassment that is pervasive from OHV use at ODSVRA due activities that have a likelihood to injure listed species. Put another way, for example, while OHV riding and other motorized vehicle activities in the area are intentional actions, the noise, vibrations, and night lighting, that harass SNPL and CLTE by flushing them from habitat and/or causing habitat abandonment are highly likely and well known to occur and cause harm to the species even though they are unintentional. Therefore, the unintended harassment of listed species caused by those activities must be included as part of the incidental take of the listed species from those activities. O4-7

The Draft HCP provides some assessment of anticipated take of listed species due to direct harm, mortality and habitat destruction but no quantification of the incidental take due to harassment which leads to flushing and abandonment of nesting, rearing, loafing, and foraging habitat due to noise, vibration, dust and other associated harms.

**C. ITP Application is Inaccurate and Misleading**

The ITP application is also inaccurate and misleading. For example, the ITP application fails to address all anticipated effects on habitat for the key species that the HCP is meant to protect including the Western snowy plover and California least tern. The ITP application admits that the HCP will decrease protections in breeding habitat in several areas, but concludes that no "overall" breeding habitat will be lost.

> *Quantify the anticipated effects to their habitat.*
> Western snowy plover: No overall breeding habitat loss. The exclosure seasonally protecting 368 acres of breeding habitat could be reduced by up to 109 acres. Up to 35 acres of habitat outside the seasonal exclosure area could be permanently affected by special projects.
> California least tern: No overall breeding habitat loss. The exclosure seasonally protecting 368 acres of breeding habitat could be reduced by up to 109 acres. Up to 35 acres of habitat outside the seasonal exclosure area could be permanently affected by special projects. O4-8

(Permit Application at pdf 15, Supplemental Attachment at 2.) These conclusions are profoundly misleading, as breeding habitat clearly will be lost due to both ongoing and expanded OHV activities. Moreover, these conclusions also completely ignore the historic loss of habitat due to unpermitted OHV activities which have degraded the habitat and "taken" individual SNPL through injury and death as well as through harassment due to OHV activity which creates noise, vibration and dust which flushes birds out of habitat they would use for breeding. As the California Coastal Commission explained even the existing seasonal closures are not sufficient to protect breeding habitat.

> The 300-acre seasonal southern exclosure within the Oceano Dunes State Vehicular Recreational Area does not encompass the entire area that plovers use for foraging, breeding, and nesting (Figure 10). This was shown during the 2020

> snowy plover breeding and nesting season when Oceano Dunes was closed to OHV use due to Covid-19 restrictions. Snowy plovers immediately expanded their territories beyond the normal bounds of the exclosure, initiating nest scrapes and sitting on active nests north of the exclosure and just south of Arroyo Grande Creek.

O4-8

(CCC.2021 at 19.) [5] The conclusions also ignore the ongoing loss of other types of habitat that will be lost under the proposed HCP including foraging and resting habitat for overwintering birds.

The ITP application also fails to mention impacts to the designated critical habitat within the HCP area and fails to explain the status of the area as an Environmentally Sensitive Habitat Area (ESHA) under the California Coastal Act. As the Coastal Commission's 2021 report "Ecological Significance of Oceano Dunes" provided:

> *Environmentally Sensitive Habitat Determination*
> All of the habitats within Oceano Dunes meet the definition of environmentally sensitive habitat area (ESHA). The area is teeming with rare vegetation communities and rare plants and animals. It also supports habitat that is especially valuable because of its special nature or role in the ecosystem. The Oceano Dunes habitats are threatened by development and human activities such as off-highway vehicle use.

O4-9

(CCC.2021 at ii). This is a highly relevant legal determination of the status of the habitat within the proposed HCP area and should have been acknowledged in the ITP application.

Similarly, the ITP application makes conclusory statements that no habitat would be lost for aquatic and riparian obligate species, with "only" annual temporary habitat loss claimed to occur.

> *c. Quantify the anticipated effects to their habitat.*
> . . .
> Southwestern pond turtle: Up to 3 acres of aquatic habitat could be temporarily disrupted annually. Up to 1.5 acres of aquatic habitat and 38 acres of upland habitat could be permanently lost.
> California red-legged frog: Up to 3 acres of aquatic habitat could be temporarily disrupted annually. Up to 1.5 acres of aquatic habitat and 38 acres of upland habitat could be permanently lost.
> Western spadefoot: Up to 3 acres of aquatic habitat could be temporarily disrupted annually. Up to 1.5 acres of aquatic habitat and 38 acres of upland habitat could be permanently lost.

O4-10

[5] *See also* discussion below regarding EA baseline and the expanded breeding when OHV activities were suspended in 2020.

Tidewater goby: Up to 5 acres of habitat could be temporarily disrupted annually. No habitat would be lost.

(*Id.)* This is profoundly misleading because the "annual temporary" disrupting activities, such as vehicles crossing Arroyo Grande Creek, activities that increase water turbidity, and disruption of upland habitat, happen throughout the year and are thus effectively permanent impacts to habitat for these species. O4-10

**D. The HCP's Alternatives Analysis is Inadequate**

The HCP would authorize damaging motorized recreation in 1,370 acres of western snowy plover (SNPL) habitat, including 412 acres of primary habitat. Nowhere in the HCP does State Parks consider reducing motorized recreation in any SNPL or California least tern (CLTE) habitat.

The HCP acknowledges that the vast majority of current take and future anticipated take of SNPL and CLTE at Oceano is from direct and indirect vehicular impacts of off-road vehicles and other vehicles driving on the beaches and dunes. (HCP 4-56 to 4-63; 4-107 to 4-112) Off-roading causes and is anticipated to cause take of SNPL through vehicle strikes, crushing of nests, strikes during night riding, nest and brood disturbance, flushing from foraging roosting and loafing areas, reducing areas of suitable habitat due to riding, and excessive trash which increases predator populations and predation (HCP 4.3 at 4-3 to 4-64). Off-roading causes and is anticipated to cause take of CLTE through vehicle strikes, nesting disturbance, reducing areas of suitable habitat due to riding, and excessive trash which increases predator populations and predation (HCP 4.4 at 4-65 to 4-114). Additional levels of take are actually caused and anticipated by mitigation measures (HCP 4.3.1.2, 4.4.1.2) intended to reduce the take of SNPL and CLTE caused by off-road activities. These measures which cause additional take include installing and maintaining fencing during nesting/fledging season, monitoring, predator control, and "habitat enhancement" (adding wrack, driftwood, and woodchips). Some of these mitigation measures and the resultant take would not be required if vehicular use were prohibited or reduced, so they are also indirect impacts of off-roading activities. O4-11

Despite off-road activities being the proximate and indirect cause of the majority of the anticipated take of SNPL and CLTE, nowhere in their HCP did State Parks consider any reduction whatsoever of motorized recreation. In fact, the HCP proposes to dramatically *expand* off-roading activities into critical protected species habitat and to reduce protected breeding habitat for snowy plovers and least terns by 1/3, including by removing the Southern Exclosure during non-breeding season, which has been administratively closed year round, and reducing the size of the 6 exclosure, which is the most important breeding area for CLTE and SNPL and a critical CLTE night roost area in the area (HCP 3.3.2.2 at 3-37; 3.3.2.8 at 3-41).

ESA section 10(a)(2)(a)(iii) requires State Parks to identify alternative actions to the proposed taking that the applicant considered and the reasons why such alternatives are not being utilized. The HCP fails to do this. Although Chapter 8 purports to address alternatives, none of the

"alternatives" evaluated include any reduction whatsoever of motorized recreation, the most obvious and effective method to reduce or prevent take (HCP 8-1 to 8-2). Reducing or eliminating vehicular recreation would be the most effective measure to reduce take below levels anticipated for the project. The HCP overtly fails to consider this alternative.

The purported "no action" alternative (HCP 8.2 at 8-1) assumes continued illegal status quo operation of Oceano Dunes with ongoing illegal take of SNPL and CLTE. *See* Order Granting Pl.'s Mot. for Summ. J., *Center for Biological Diversity v. Quintero et al.,* Case No. 2:20-cv-09965-AH, Dkt. No. 64 (C.D. Cal. Nov. 20, 2025) (holding that State Parks' current authorization of motorized vehicle use at Oceano Dunes SVRA results in the "take" of snowy plovers in violation of the ESA). The HCP does not contain a valid "no action" alternative that would eliminate or avoid illegal take. Instead, the HCP recognizes that existing operations currently result in take and rejects this alternative because USFWS would still be required to enforce the Endangered Species Act and such enforcement might result in operation shutdowns in order to prevent take.

The Draft HCP identifies three additional "alternatives": Maintain Northern Exclosure Boundary Alternative (HCP 8.3 at 8-1 to 8-2), which is the same as the proposed project except for the elimination of the 6 exclosure; Increased Patrols and/or Staffing Alternative (HCP 8.4 at 8-2), which is the proposed project plus "possibly" increasing covered species surveys and law enforcement patrols in the HCP area; and Project-by-Project Permitting (HCP 8.5 at 8-2), which would require individual ITPs for individual maintenance and/or recreation activities. None of these alternatives evaluates any substantive reduction in motorized recreation or otherwise represents a meaningful departure from the proposed project. O4-11

In addition, the alternatives discussed in the HCP are not identical to those evaluated in the EA. For example, the HCP does not include an alternative comparable to the EA's Alternative 4 (Permanent Year-Round Exclosure) (EA at 7). Conversely, the HCP includes alternatives—specifically, the Increased Patrols and/or Staffing Alternative and the Project-by-Project Permitting alternative—that are not evaluated in the EA, further underscoring the inadequacy and inconsistency of the alternatives analysis.

The Maintain Northern Exclosure Boundary Alternative (HCP 8.3 at 8-1) is rejected even though it would result in less take of listed species because the HCP concludes that the southern exclosure must be sacrificed for "recreational needs," which take priority over habitat protection for listed species. The alternatives analysis in the HCP does not find that this alternative is infeasible. The minimal analysis of this alternative violates the requirement of ESA section 10(a)(2)(b)(ii) that the HCP minimize and mitigate the impacts of take to the maximum extent practicable.

The California Coastal Commission formally commented on the prior draft HCP (CCC 2020a), which proposed the same alternatives as the 2025 Draft HCP, and requested that State Parks consider alternatives that reduce the current level of off-road use in Oceano Dunes, including an

evaluation of 15 measures that State Parks is required by the Coastal Commission to address in its now-dormant Public Works Plan (PWP) to comply with the Coastal Act. The Coastal Commission also recommended the HCP evaluate no off-road use in the park, which would clearly reduce take of the listed species covered by the HCP. Indeed, as part of the PWP process, the Coastal Commission proposed an alternative that could be considered in the HCP, and that would virtually eliminate all take of SNPL and CLTE while still allowing limited managed motorized recreation (CCC 2020b). The CCC staff recommendation was to phase out off-road use at Oceano Dunes over the next 5 years, closing the Pier Avenue entrance to vehicles and abandoning the concept of a southern entrance, which would no longer be needed. Driving and car camping would be permitted on the beach only between Grand and Pier Avenues, where there would be no impacts on listed species. There would be no further vehicular crossings of Arroyo Grande Creek. The beach south of Pier Avenue could continue to be safely used by non-motorized Oceano residents and visitors. SNPL and CLTE could use all suitable nesting, foraging, and overwintering areas unmolested by vehicles. The HCP fails to consider any such alternatives or measures. O4-11

The fact that Chapter 8 of the HCP consists of 11 brief cursory paragraphs with 4 straw-man pseudo-alternatives shows the token consideration given in the HCP to actual alternatives that would minimize and mitigate take. The proposed HCP violates ESA section 10(a)(2)(a)(iii) by not adequately considering or evaluating alternative actions to the proposed taking that would reduce or eliminate take, and by not explaining the reasons why feasible alternatives to reduce take are not being considered or utilized.

**E. The HCP Underestimates Actual Levels of Take**

State Parks' estimates of adult and juvenile SNPL lethal take and/or harm are largely based on past observations of injured and dead SNPL. From 2001 to winter of 2024, 83 dead or injured adult and/or juvenile SNPL were recovered in the areas open to recreation, and some were determined to have been killed or injured by trauma. (2025 HCP 4-57). As a result, these deaths could be attributed to recreation activities, mostly motorized activities, park operations, or other activities not related to covered species management. Of the dead or injured SNPL found between 2001 and winter 2024, a total of 49 were found during the breeding season and 34 dead or injured adult and/or juvenile SNPL were recovered during the non-breeding season. (2025 HCP 4-57). O4-12

State Parks' methodology for calculating anticipated take of adults and juveniles of SNPL (2025 HCP 4.3.2) and CLTE (2025 HCP 4.4.2) is demonstrably flawed and underestimates likely actual take. The HCP (2025 HCP 4-59 n.55) states "Although the majority of dead or injured adults/juveniles are likely found, not all dead or injured adults/juveniles are assumed to be detected due to SNPL that are scavenged or buried prior to discovery and SNPL cryptic size and coloration. Therefore, this take estimate considers a worst-case scenario where additional dead or injured adults/juveniles may not have been discovered in some years in both the breeding and non-breeding seasons." However, the HCP does not specify what the fatality estimate

adjustments are for SNPL or CLTE based on searcher efficiency and detection rates or carcass persistence.

A recent analysis prepared by K. Shawn Smallwood at the request of the Center for Biological Diversity concludes that State Parks' reliance on incidentally detected injured and dead western snowy plovers substantially underestimates lethal take because State Parks has not implemented systematic carcass searches or empirically grounded adjustments for carcass detectability and persistence. (Smallwood 2026). Using State Parks' annual nesting monitoring data (2010 – 2023) and incident records, Smallwood's analysis estimates true mortality by comparing reported chick fatalities to inferred chick mortality (based on chicks hatched versus fledged), then adjusting juvenile and adult fatality counts to account for underdetection and age-related differences in carcass detectability. With respect to vehicle-related mortality, Smallwood estimated direct take of 72 to 104 SNPL per year. The report further explains that incidental fatality detection typically captures only a small fraction of actual mortality and identifies additional unquantified indirect mortality associated with motorized recreation, including nest abandonment, disrupted foraging, and prey loss. (Smallwood 2026). These findings demonstrate that the draft HCP's adult and juvenile take estimates—while acknowledging imperfect detection—are not supported by quantified adjustments for detection probability or carcass persistence and therefore substantially underestimate likely actual take. O4-12

One problem is that State Parks' survey methods are vague and unscientific, and discovery of SNPL and CLTE carcasses seems opportunistic. Additionally, State Parks' searches are not designed to monitor for non-lethal take in the form of harassment. The HCP states there will be daily monitoring for SNPL and CLTE during the breeding season, and weekly monitoring for SNPL during the non-breeding season. However, the HCP does not explain any of the search methodology such as whether searchers walk transects or how far out they scan from where they are walking. Because significant SNPL mortalities have been found during the non-breeding season, year-round daily surveys should be required.

**F. The HCP Does Not Evaluate Activities Likely to Cause Additional Take**

The HCP acknowledges that the proposed removal of the seasonal fencing along the east Boneyard Exclosure and the incremental reduction of the 6 Exclosure would reduce the amount of protected nesting habitat available for SNPL and CLTE in the HCP area by 1/3, a large portion of which is high quality nesting habitat for these species. CDFW noted in their formal comments on the 2020 draft HCP (CDFW 2020) that this large-scale habitat removal will not only result in a reduction of available protected nesting habitat, but may also lead to SNPL and CLTE nesting outside of the protected habitat areas, exposing them to additional potential impacts from human and recreation activities occurring within the HCP area. CDFW noted that additional impacts to SNPL and CLTE may also occur from nest overcrowding in the remaining protected areas, out-competition of available nesting space within the remaining exclosures, failure to breed, and/or reduced fitness. CDFW noted that by allowing HCP activities to encroach within closer proximity to the remaining areas of protected habitat, the quality of the remaining protected habitat may be reduced. CDFW concluded that the reduction of available nesting O4-13

habitat and increased disturbance from HCP activities occurring within and adjacent to these areas "may also cause SNPL, CLTE and other migratory bird species to discontinue their use of these areas and the HCP area in general."

Although the HCP acknowledges that removal of the East Boneyard breeding-season closure could disrupt SNPL and CLTE nesting in the adjacent West Boneyard due to the new vehicle traffic (2025 HCP 2-44), it merely states that additional fencing would be erected, as needed, to maintain appropriate buffers. The HCP does not evaluate whether such measures would be effective, nor does it assess the additional take risks and other impacts associated with increased disturbance, displacement, habitat degradation, or the additional fencing resulting from these changes. As a result, the HCP fails to analyze activities likely to cause additional take arising from the proposed reduction and reconfiguration of protected nesting habitat.

O4-13

In addition, the HCP fails to evaluate or quantify incidental take resulting from harassment, despite acknowledging that off-highway vehicle use and other covered activities routinely generate noise, vibration, lighting, and human presence within occupied habitat. The 2025 Draft HCP expressly excludes all take by harassment from its anticipated take estimates for SNPL and CLTE, relying on withdrawn agency memorandum and an incorrect interpretation of the ESA and its implementing regulations that is inconsistent with the law. *See* Section B (*Changes in Level and Type of Anticipated Take From Covered Activities*), *supra*. As a result, the Draft HCP does not assess the likelihood that OHV-related disturbances and other disturbances from covered activities—which have a demonstrated history of flushing birds from nesting, rearing, loafing, and foraging habitat—will disrupt normal behavioral patterns in a manner that creates a likelihood of injury. By omitting any analysis or quantification of this pervasive form of incidental take, the Draft HCP understates total take and fails to evaluate activities that are likely to cause additional take through harassment.

**G. Much of the Proposed Take is Avoidable**

Section 10(a)(2)(A)(ii)-(iii) of the Endangered Species Act requires an applicant to minimize and mitigate the impacts of incidental take to the maximum extent practicable and to identify and evaluate alternative actions to the proposed taking, including the reasons why such alternatives are not being utilized. Here, State Parks has the ability to avoid or substantially reduce incidental take of SNPL and CLTE by eliminating or significantly curtailing off-road vehicle activities in the areas of the HCP where such activities are reasonably certain to result in take.

O4-14

As part of the PWP process, the Coastal Commission proposed an alternative for the PWP which should be incorporated into the HCP and would virtually eliminate all take of SNPL and CLTE, while still allowing limited managed motorized recreation in appropriate areas (CCC 2020b). Adoption of such an alternative could eliminate vehicle strikes of SNPL and CLTE, and dramatically reduce nest and brood disturbance, flushing from foraging and roosting areas, reduction in areas of suitable habitat due to riding, and excessive trash which increases predator populations and predation, as well as eliminate or reduce the need to install and maintain the type

of fencing during nesting/fledging season that could attract predators and lead to bird collisions with fences.

Because these avoidance and minimization measures are practicable and supported by an identified alternative, the Draft HCP fails to satisfy the ESA's Section 10 requirements that incidental take be minimized and mitigated to the maximum extent practicable. O4-14

**H. The HCP Contains Insufficient Mitigation and Conservation Measures**

Section 10(a)(2)(A)(ii) of the Endangered Species Act requires that an HCP minimize and mitigate the impacts of incidental take to the maximum extent practicable. The 2025 Draft HCP fails to meet this standard because it authorizes the removal of existing, demonstrably effective protections for SNPL and CLTE without providing mitigation measures that offset the resulting increase in take or loss of habitat function.

In its comments on the 2020 draft HCP, CDFW explicitly stated that the proposed removal of seasonal fencing erected along the Boneyard Exclosure (approximately 49 acres) and the incremental removal of seasonal fencing along the 6 Exclosure (60 acres) to allow year-round recreation in these two exclosures will have significant impacts on SNPL and CLTE that were not adequately identified or mitigated in the 2020 draft HCP. CDFW (2020) stated "the suggestion that these activities, with the proposed avoidance and minimization measures, will have a less than significant impact on SNPL and CLTE is a gross underestimation by the DEIR and HCP of the severity that the proposed activities will have on these populations and their long-term reproductive success." According to the 2025 HCP, the 6 Exclosure alone is the location where up to 87% of the CLTE population nests on an annual basis. CDFW states that the proposed HCP avoidance and minimization measures including a slow reduction of the 6 Exclosure, a reinstatement of the 6 Exclosure if success criteria are not met, and creating single nest exclosures for SNPL that nest outside of protected areas "will not replace nor offset the removal of protected nesting and foraging habitat nor meet the requirements to avoid impacts to a fully protected species." CDFW (2020) concludes that the HCP does not adequately identify or mitigate the Project's significant, or potentially significant, impacts on biological resources. The 2025 Draft HCP retains these same measures and deficiencies. O4-15

The 2025 Draft HCP no longer explicitly asserts that off-road vehicle disturbance itself is beneficial to nesting habitat, retreating from the prior draft HCP theory that rotating year-round exclosures and reopening them to recreation disturbance would maintain suitable nesting conditions by suppressing vegetation and topographic relief. Instead, the HCP acknowledges that the optimal "combination of open sand, microtopography, and scattered vegetation and debris is not fully known and has not been studied in the HCP area," (2025 HCP 2-24), and proposes target vegetation and dune manipulation within the Southern Exclosure to restore habitat productivity. Specifically, CDPR anticipates removing vegetation and dune hummocks during the non-breeding season to mimic natural disturbance processes associated with creek and river mouths, with the goal of creating artificial "blow-out" areas. However, this revised approach

remains unsupported by site-specific analysis demonstrating that mechanical vegetation removal replicates natural disturbance regimes in a manner that benefits SNPL or CLTE, or that such actions would offset the loss of existing protected habitat proposed elsewhere in the HCP.

Additionally, the HCP acknowledges that seasonal off-road use from October to February in the in the 6, 7, and 8 exclosures "results in large areas of flattened terrain and barren sand with very limited scattered debris and vegetation" and necessitates "habitat enhancement" by placing driftwood, wood chips and wrack, and sometimes plants in these exclosures to improve nesting and foraging habitat for SNPL and CLTE. (2025 HCP 2-23 to 2-24). This acknowledgment demonstrates that off-road vehicle use actively degrades habitat and necessitates ongoing remedial intervention, rather than representing a condition that has been minimized to the maximum extent practicable. Yet, the Draft HCP simultaneously proposes to expand off-road vehicle access by eliminating a large portion of existing exclosures, thus further exacerbating the same habitat degradation the HCP already acknowledges.

***6 Exclosure changes***

The HCP would incrementally (7.5 acres/year over ~8 years) eliminate the 6 Exclosure (62 acres) to open 109 additional acres of now-protected breeding habitat for off-roading during the SNPL and CLTE breeding season. This would eliminate 1/3 of the current plover breeding habitat and 1/3 of the CLTE breeding habitat in the HCP area, consisting of some of the most important breeding areas for CLTE and SNPL. From 2005 to 2023, the 6 Exclosure was the location of 24–46% of all SNPL and 7–87% of all CLTE nests during the breeding period. The northern portion of Subarea 6 (slated to be removed from protection first), has been the location of the CLTE communal night roost over the last several years, although since 2020, the location has been increasingly variable. The HCP acknowledges that removing the 6 Exclosure fence could expose between 25 and 97 SNPL nests annually to off-road vehicles and expose 75 to 291 SNPL chicks to vehicle strikes each year. The HCP acknowledges that eliminating the preferred CLTE night roost area in the 6 exclosure could result in subjecting between 35 and 95 individual CLTE to vehicle strikes and/or disturbance from recreation. O4-15

The Southern Exclosure was initially extended north to Post 6 in July 2003 as a result of a consent decree that State Parks entered into with a local Sierra Club chapter in 2005. The consent decree stipulated that State Parks "shall support a northern [seasonal exclosure] boundary of Distance Marker Number 7, notwithstanding the terms of this consent decree." State Parks proposes to violate this consent decree in the HCP, claiming that sacrificing important covered species breeding habitat for off-road recreation is "compatible with natural and cultural resources conservation, specifically the conservation of SNPL and CLTE." The HCP proposes that if specific criteria are met, State Parks may approve the incremental reduction of the 6 Exclosure, and the approximately 60-acre exclosure may ultimately no longer be fenced.

Although the HCP states that Subarea 6 breeding protections would be removed in stages, and only if species' objectives are met, those objectives are set below current and historical

occupancy and fledgling rates, practically ensuring they will be easily met. The criteria would be that the 6 exclosure size will not be reduced unless the overall ODSVRA SNPL breeding population size is greater than 180 breeding SNPL for 3 consecutive years with a fledge rate of 1.0 fledgling per pair over the same period; and the CLTE breeding population has a 5-year average of 35 nesting pairs and a fledge rate of 1.0 fledglings per pair. Of course, the Oceano Dunes SNPL population has met that arbitrary criteria every year since 2014, and the 180 SNPL breeding adults is substantially lower than the five-year average of 207 breeding adults. The HCP criteria of 1.0 fledgling SNPL per adult male plover per year is lower than the five-year average fledgling rate of 1.28. For CLTE, the HCP criteria of 35 breeding pairs per year is also lower than recent documentation.

The 6 Exclosure would be reduced in approximately 328-foot (100-meter) increments from north to south, or State Parks may implement alternative incremental reductions—such as by adjusting the eastern fence— "to better suit SNPL and CLTE management." (2025 HCP 2-45). In the unlikely case that the criteria were not met for either species, the 6 Exclosure will be restored to its original extent in the following breeding season in coordination with the USFWS. Once the criteria is met, the exclosure would be eliminated. These standards have the effect of allowing a decrease in breeding and fledgling success, with the exception of fledgling success for CLTE. The HCP does not provide evidence to support how these lower rates minimize and mitigate the effects of the covered activities.

O4-15

The CCC (2020a) noted that the removal of Subarea 6 "will cause nests established in the remaining exclosure areas to be packed more tightly, and there is already evidence that the tight spacing of WSP and CLT nests within the existing 300-acre seasonal exclosure acreage has led to adult territorial aggression when chicks from one brood wander into the territory of another (hence the Coastal Commission's July 2019 recommendation to increase the size of the exclosure area)." In order to reduce the density of nests an alleviate adult territorial aggression on chicks, the 2025 HCP (and EA) should have considered an alternative that expanded 6 Exclosure.

The HCP also proposes that bump outs or individual nest exclosures would be used if SNPL nest in Subarea 6 following the removal of fencing. As the CCC stated, "this is not an equivalent means of protection." Although individual nest exclosures have been known to provide nest protection, they can also lead to greater predation of adult SNPL when avian predators perch on top of the exclosures and consume adults as soon as they leave the nest, with mortality of nest eggs or chicks soon to follow.

The CCC (2020a) concluded that the proposed closure of the east boneyard exclosure and opening up of an additional 40 acres to OHV riding just north of Oso Flaco Lake are also likely to increase take of SNPL and CLTE. Although the 2025 HCP notes that fewer birds have nested in the east boneyard location in recent years, this exclosure area still provides an important buffer to the west boneyard area, where more SNPL nest. The CCC (2020a) states that this buffer "helps maintain a substantial distance between nesting birds and OHV riders and pedestrians.

Moreover, the east boneyard exclosure has acted as a barrier for through traffic between northern and southern areas of the park during the nesting season, and from northern access to the Oso Flaco Lake area. If it is removed, it is highly likely that OHV traffic will increase in this location, thereby increasing the risk of vehicle collisions with WSP."

The CCC (2020a) notes that there has been "an alarmingly high take of [SNPL] at Oceano Dunes in recent years." In 2018, there was one documented CLTE and 36 SNPL deaths from all causes to chicks, juveniles and adults and many additional birds were injured. In 2019, the documented death rates were 3 for CLTE and 26 for SNPL. It was also noted that several of these individuals were found amidst tire tracks. The CCC (2020a) concurs that "given the difficulty of locating small birds across this vast area, these numbers undoubtedly underestimate the actual take of these listed species." That conclusion is reinforced by a recent expert analysis prepared by Smallwood, which found that State Parks' reliance on incidentally detected carcasses substantially underestimates actual mortality and that true SNPL take at ODSVRA may be an order of magnitude higher than reported, particularly for vehicle-related mortality (Smallwood 2026). O4-15

The CCC (2020a) concludes that the 2020 draft HCP would allow increased take of SNPL and CLTE by reducing existing protections. The CCC (2020a) comments that the success criteria for SNPL and CLTE "raise concerns more generally about the adequacy of the analysis of appropriate minimization and mitigation measures" in the HCP. The CCC (2020a) recommends that the HCP "focus more on maximizing habitat protections and seeking ways to increase the occupancy of breeding pairs and fledgling rates" and is concerned that the HCP "lowers the bar for success by setting more modest goals that could then be used as justification to open up additional acreage to OHV activity, thereby neither minimizing impacts to protected species nor maximizing mitigation." Those concerns remain applicable to the current 2025 Draft HCP, which retains reduced success criteria and continues to propose the removal of existing habitat protections without demonstrating commensurate minimization or mitigation of take.

## I. The HCP Will Likely Result in Additional, Unevaluated Impacts on Special Status Plant Species

The 2025 HCP acknowledges potential impacts to special status plant species from proposed mechanical trash removal, fence installation and removal, and newly proposed activities and special projects. These include potential impacts to the state and federally endangered marsh sandwort (*Arenaria paludicola*) and Nipomo Mesa lupine (*Lupinus nipomensis*); the state threatened and federally endangered Gambel's watercress (*Nasturtium gambelii*) and La Graciosa thistle (*Cirsium scariosum* var. L*oncholepis*)*;* and the state threatened surf thistle (*Cirsium rhothophilum*) and beach spectaclepod *(Dithyrea maritima*). O4-16

The formal CDFW comments on the 2020 draft HCP (CDFW 2020) note that not all areas with potentially suitable habitat for special-status plants in the HCP area have been surveyed by a qualified botanist following CDFW survey protocols (CDFW 2018). CDFW also advised (CDFW 2020) that the HCP needs to be revised to avoid impacts to special-status plant species by including a 50-foot no-disturbance buffer around the outer edge of plant population(s) or

specific habitat type(s) that support special-status plant species observed in the HCP site. AMM 18 includes a 25-foot buffer related to Habitat Restoration Program but does not otherwise address these issues.

The HCP (2025 HCP 4.10.2.3.1) claims that impacts from mechanical trash removal on listed plant species is unlikely and minimal because mechanical raking would be conducted to remove litter in areas where recreation activities have been concentrated and the substrate is already highly disturbed, and that these areas are unlikely to support listed plants due to the high level of recreational impacts. However, the HCP (2025 HCP 4.10.2.3.1) acknowledges that listed plants such as surf thistle, La Graciosa thistle, and beach spectaclepod could occur within sand dune areas and/or areas with sparse vegetation north of Post 6. State Parks has not conducted protocol level surveys to determine if any of these listed plants occur where mechanical trash removal is proposed and thus cannot presume "unlikely" or "minimal" impacts.

The proposed Oso Flaco Campground and Public Access Project in the PWP, which is now on hold, could have potentially significant impacts on Marsh Sandwort (*Arenaria paludicola*), Gambel's Water Cress (*Nasturtium gambelli*), and La Graciosa Thistle (*Cirsium scariosum* ssp. *loncholepis*). None of these potential impacts nor any avoidance or mitigation measures are discussed in the HCP.

The HCP proposes activities that would destroy and degrade designated critical habitat for La Graciosa thistle. Approximately 94 acres of La Graciosa thistle critical habitat would be open to motorized recreation. The HCP claims that because these 94 acres have been subjected to degradation by motorized recreation and are outside of protected vegetation islands, they do not currently contain the physical and biological features for La Graciosa thistle in appropriate quantity and spatial arrangement necessary to provide the features essential to the conservation of La Graciosa thistle. This does not somehow remove these areas from critical habitat. Fencing these 94 areas and preventing off-road activity would allow the physical and biological features for La Graciosa thistle to return. An additional 4.8 acres of La Graciosa thistle critical habitat currently closed to recreation may be opened up to off-road activity on a seasonal basis, and a motorized trail system may also be installed in the area. O4-16

Up to 142 additional acres of La Graciosa thistle critical habitat may be affected by cultural resource management, dust control activities, the construction of special projects, and the riding trail due to ground disturbance or new vegetation planting associated with these activities. (2025 HCP 4-222). The dust control activities will primarily be installed in sandy dune habitat, so no impacts to existing mesic habitats are expected, and any vegetation installed potentially provides new habitat for La Graciosa thistle colonization. Similarly, sensitive cultural resources sites are typically protected from recreation activities and thus may also benefit La Graciosa thistle by prohibiting recreation activities from La Graciosa thistle habitat. A new facility constructed as a special project within La Graciosa thistle critical habitat would permanently remove an apparent 35 acres of critical habitat. The HCP tries to rationalize the permanent loss of this 35-acres of

critical habitat because it only represents 0.01 percent of the total amount of critical habitat currently available within the HCP area.

The HCP (2025 HCP 4-222) acknowledges that motorized recreation may affect La Graciosa thistle critical habitat by crushing vegetation, seedlings, and seeds of plants representative of the vegetation islands, including La Graciosa thistle that may occur outside of the protected vegetation islands thereby preventing migration of vegetation in these islands into the areas open to riding; and that motorized recreation may indirectly affect the vegetation islands by increasing sand movement into the vegetated islands and other vegetated critical habitat. O4-16

The HCP claims AMMs listed in section 5.3 will be implemented to minimize effects on La Graciosa thistle critical habitat, but does not explain how this applies to the 35 acres permanently lost for construction of a special facility nor does it address the nearly 100 acres that will be impacted by off-road activity.

**J. The HCP Should Address State Parks' Past Non-Compliance with the Endangered Species Act and California Conservation Laws.**

State Parks' long history of refusal to comply with the Endangered Species Act raises questions about the likelihood of State Parks compliance with promised mitigations and permit conditions in the HCP. Most recently, in November 2025, the U.S. District Court for the Central District of California has ruled that State Parks has violated the Endangered Species Act by allowing motorized vehicle use that unlawfully takes SNPL at ODSVRA. Order Granting Pl.'s Mot. for Summ. J., *Center for Biological Diversity v. Quintero et al.,* Case No. 2:20-cv-09965-AH, Dkt. No. 64 (C.D. Cal. Nov. 20, 2025).

In June 2020 State Parks staff were caught illegally and deliberately interfering with nesting of numerous SNPL at Oceano Dunes. SNPL had expanded their nesting and foraging areas since the beach was closed to vehicles in late March 2020 by the COVID-19 crisis. (See CCC.2021 at 19; Center for Biological Diversity. 2020a, 2020b, 2020c, 2020d.) State Parks was documented and admitted attempting to prevent plovers from nesting in former off-road riding areas, with staff scuffing out nesting "scrapes" made by plovers and installing mylar flagging to deter expanded nesting. State Parks also deployed graders and other heavy equipment on the beach near plover nesting areas without a required CDP, likely disturbing nesting birds. The California Coastal Commission documented these violations and clarified that interfering with plover nesting and grading violated the Coastal Act in Commission letters of June 16 and July 3, 2020 (CCC 2020d, 2020e). The CCC issued a cease and desist order by consent decree on July 8, 2020 (CCC 2020f). This interference with nesting activity in favor of motorized OHV riding, may not be an isolated incident—but it is a documented incident that shows the priorities of State Parks. In addition, State Parks also has failed to obtain a NCCP required under California state law—although it has said it would do so for years. O4-17

FWS must assess that State Parks' proposed 2025 HCP and the promised mitigations in that light and consider whether the proposal is workable and will actually result in the promised conservation for the covered species. O4-17

**K. The Best Available Science on Pesticide Exposure Not Included in the Analysis and Must be Considered**

The Center raised toxicity issues with some of these pesticides in our June 1, 2020 and December 21, 2020 comments on the draft HCP (CBD 2020f, and 2020g), those comments are attached and incorporated herein by reference. The Center remains concerned about the use of pesticides in this ecosystem. Neither the 2025 Draft HCP nor the Recirculated EA provide the in-depth analysis that is necessary to fully disclose the potential impacts of these herbicides. Appendix H relies on out-dated information on the pesticides that are discussed. See Appx. H at 8-9 (no references after 2019).

In 2020 the Center submitted information about Aminocyclopyrachlor, Clethodim, Glyphosate,Triclopyr, and Fluazifop-P-Butyl which included more recent studies and information than presented in the 2020 HCP and EA, but the applicant and FWS have not addressed or analyzed much of that information which may require the agencies to revise conclusions about risk of exposure to covered and sensitive species and habitats in the HCP and further avoidance, minimization and mitigation actions for pesticides. And there is newer information about several of these pesticides specifically glyphosate (Roundup), Triclopyr (Garlon), Aminopyralid (Milestone) some of which is provided below. O4-18

The Center recognizes that the use of pesticides in the HCP is almost exclusively to control invasive species and encourage re-establishment of native dune and wetland vegetation, to the benefit of listed species. However, additional safeguards are required to minimize impacts to species including humans.

Use of pesticides in the 2025 Draft HCP is discussed (2025 HCP at 2-45 to 2-47) and a detailed description of these pesticides and their toxicity is included in Appendix H. Pesticides currently used and proposed for continued use in the HCP area include the following:

- Glyphosate (Roundup)
- Imazapyr
- Fluazifop p butyl (Fusilade)
- Triclopyr (Garlon)
- Aminocyclopyrachlor (Perspective)
- Chlorsulfuron (Perspective)
- Aminopyralid (Milestone)
- Clethodim (Vaquero)
- Sethoxydim (Poast)
- VectoBac G

• Crosshair
• Surfactants

Three main herbicides are used throughout the HCP area as part of IPM program implementation, including glyphosate (Roundup), imazapyr, and fluazifop-P-butyl (Fusilade). Triclopyr (Garlon), aminocyclopyrachlor + chlorsulfuron (Perspective), and aminopyralid (Milestone) are used infrequently in the HCP area.

(*Id*. at 2-46 to 2-47.)

In addition to the information provided in 2020, below is some newer science on three of the pesticides currently in-use and proposed for continued use in the HCP area and as they relate to the proposed covered species.

***Glyphosate (Roundup)***

O4-18

A 2015 EPA analysis found multiple environmental harms from glyphosate use. Use of glyphosate in accordance with the label was found to:

1) Result in concentrations that can potentially impact the survival and biomass of aquatic plants, upland plants, and riparian/wetland plants.6
2) Result in residues on foliage that can potentially impact the growth of herbivorous birds, reptiles and terrestrial amphibians.7
3) Potentially impact the growth and reproduction of terrestrial mammals following ground applications of glyphosate. 8

This analysis also indicated that considerable no-spray buffers would be needed to keep off-target plants from being harmed by glyphosate use, more than 1000 feet for certain aerial applications and nearly 400 feet for certain ground applications.9 The states of California and Arkansas both adopted mandatory no-spray buffers of 500 feet for aerial applications.10

6 EPA. Preliminary Ecological Risk Assessment for Glyphosate and Its Salts. Sept. 8, 2015 page 2. Available here: https://www.regulations.gov/document?D=EPA-HQ-OPP-2009-0361-0077.

7 *Id*.

8 Id.

9 *Id. at* 92.

10 EPA. Drinking Water Assessment for the Registration Review of Glyphosate. June 15, 2017. Pg. 16.

Ecological incident data also reinforce the finding that the current labelled uses of glyphosate are having devastating effects to plant and animal life outside of the sprayed field.11Approximately 600 incidents have been reported and logged on the Ecological Incident Information System (EIIS) and Avian Monitoring Information System (AIMS) databases. A separate Incident Data System (IDS) database has identified 269 separate aggregate incident reports. Ecological incidents are also significantly underreported for pesticides so this should be viewed as the absolute bare minimum of ecological incidents that involve glyphosate.

A final biological evaluation was released by the EPA on how use of glyphosate may affect all endangered and threatened species in the United States. The agency concluded that glyphosate would "Likely Adversely Affect" 1676 out of 1795 listed species (93%) and adversely modify 759 out of 792 designated critical habitat in the U.S.12This includes nearly every single listed species and critical habitat in the United States and all that reside in or near the action area being considered.13

O4-18

The EPA has found that glyphosate poses a risk to a federally listed amphibian, the California Red-legged frog, making a Likely to Adversely Affect determination for the species. 14Some glyphosate formulations and co-formulants have been found to be "highly toxic" to certain species of fish.15

Researchers have found negative associations between glyphosate use and monarch population size.16 Use of glyphosate has been tied to widespread declines of milkweed, which is essential

11 EPA. Preliminary Ecological Risk Assessment for Glyphosate and Its Salts. Sept. 8, 2015. Pgs 59-62. Available here: https://www.regulations.gov/document?D=EPA-HQ-OPP-2009-0361-0077.

12 EPA. Final National Level Listed Species Biological Evaluation for Glyphosate. November 2021. Available here: https://www.epa.gov/endangered-species/draft-national-level-listed-species-biological-evaluation-glyphosate. Executive Summary.

13 Id. at Appendix 4-1

14 EPA. Risks of Glyphosate Use to Federally Threatened California Red-legged Frog (Rana aurora draytonii). Pesticide Effects Determination. October 17, 2008. Available here: https://www3.epa.gov/pesticides/endanger/litstatus/effects/redleg-frog/glyphosate/determination.pdf.

15 Id. at 82, 84.

16 Semmens, B. X., D. J. Semmens, W. E. Thogmartin, R. Wiederholt, L. Lopez-Hoffman, J. E. Diffendorfer, J. M. Pleasants, K. S. Oberhauser and O. R. Taylor (2016). "Quasi-extinction risk and population targets for the Eastern, migratory population of monarch butterflies (Danaus plexippus)." Sci Rep 6: 23265.

to monarch butterfly survival.17 This is of particular concern given the monarch butterfly populations in the HCP area at the Pismo State Beach monarch grove.

The World Health Organization's International Agency for Research on Cancer ("IARC") conducted an exhaustive review of the publicly available scientific literature in 2015 and concluded that glyphosate is "probably carcinogenic to humans" (Group 2A).18 IARC carefully weighed evidence in three areas, and found that: 1) There was sufficient evidence to conclude that glyphosate causes cancer in animal studies; 2) There was limited evidence that exposure to glyphosate causes cancer (non-Hodgkin lymphoma) in humans; and 3) There was strong evidence that glyphosate can damage DNA and induce oxidative stress,19 two well characterized pathways that can lead to cancer.20 O4-18

IARC's finding that glyphosate causes cancer in animals prompted California's Office of Environmental Health Hazard Assessment to list glyphosate as a known carcinogen under California's Proposition 65 law.21The agency has also finalized a No Significant Risk Level for glyphosate, which estimated the daily exposure level that will result in a 1/100,000 chance of developing cancer, of 1.1 mg/day.22

***Triclopyr (Garlon)***

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17 Center for Biological Diversity, Petition to Protect the Monarch Butterfly (Danaus Plexippus Plexippus) Under the Endangered Species Act, 7 (2014), available at http://www.biologicaldiversity.org/species/invertebrates/pdfs/Monarch_ESA_Petition.pdf

18 WHO. IARC Monographs on the Evaluation of Carcinogenic Risks to Humans. Volume 112: Some Organophosphate Insecticides and Herbicides. Glyphosate. 2017. Available at: http://monographs.iarc.fr/ENG/Monographs/vol112/mono112.pdf

19 Id.

20 Klaunig, J.E., et al., The role of oxidative stress in chemical carcinogenesis. Environ Health Perspect, 1998. 106 Suppl 1: p. 289-95; and Lee, S.J., et al., Distinguishing between genotoxic and non-genotoxic hepatocarcinogens by gene expression profiling and bioinformatic pathway analysis. Sci Rep, 2013. 3: p. 2783.

21 OEHHA. The California Environmental Protection Agency's Office of Environmental Health Hazard Assessment. Glyphosate Listed Effective July 7, 2017, as Known to the State of California to Cause Cancer. Available at: https://oehha.ca.gov/proposition-65/crnr/glyphosate-listed-effective-july-7-2017-known-state-california-cause-cancer

22 OEHHA. The California Environmental Protection Agency's Office of Environmental Health Hazard Assessment. Amendment to Section 25705 No Significant Risk Level - Glyphosate April 10, 2018. Available at: https://oehha.ca.gov/proposition-65/crnr/amendment-section-25705-no-significant-risk-level-glyphosate-april-10-2018.

EPA has found that the use of triclopyr can expose birds, reptiles and terrestrial amphibians to levels of the herbicide that cause reduced survival of offspring.23 The same uses can expose mammals to 37 times the amount of triclopyr known to reduce litter size.24 All labelled uses of triclopyr were found to expose adult and larval bees to levels estimated to reduce survival and larval emergence.25 Harm to bee larva was estimated more than 1000 feet from the application site.26 Terrestrial plants were also estimated to be exposed to levels of triclopyr that were known to cause harm more than 1000 feet away from the site of application, even for ground applications.27

Triclopyr butoxyethyl ester (BEE) is classified as "highly toxic" to aquatic organisms. Range, pastureland and meadow uses of BEE can expose fish and aquatic invertebrates to levels of the pesticide known to cause acute harm.28 The EPA has found that triclopyr poses a risk to a federally listed amphibian, the California Red-legged frog, making a Likely to Adversely Affect determination for the species.29 O4-18

***Aminopyralid (Milestone)***

EPA has found that aminopyralid poses a high risk to non-target plants, particularly broad-leafed plants. Native plants in terrestrial and aquatic habitats were both found to have high risk of decreased biomass when growing near where aminopyralid is sprayed.30 The highest risks were for spot treatment (which has a higher application rate than other treatment methods), with nearby native plants potentially exposed to aminopyralid runoff and spray drift at levels more

23 EPA. Triclopyr (Acid, Choline salt, TEA salt, BEE): Draft Ecological Risk Assessment for Registration Review. Sept. 30, 2019. Pg. 6. Available here: https://www.regulations.gov/document?D=EPA-HQ-OPP-2014-0576-0026.

24 Id. at 8.

25 Id. at 9.

26 Id. at 90.

27 Id. at 94-95.

28 Id. at 9.

29 EPA. Risks of Triclopyr Use to Federally Threatened California Red-legged Frog (Rana aurora draytonii) Pesticide Effects Determination. October 19, 2009. Available here: https://www3.epa.gov/pesticides/endanger/litstatus/effects/redleg-frog/triclopyr/analysis.pdf

30 EPA. Aminopyralid: Draft Ecological Risk Assessment for Registration Review. June 30, 2020. Page 40. Found here: https://www.regulations.gov/document/EPA-HQ-OPP-2013-0749-0048

than 100 times higher than the known toxic concentration. 31 Risks of concern for ground and aerial applications of aminopyralid extended more than 1,000 ft from the site of application.[32]

As noted above, unfortunately, the 20205 Draft HCP, Recirculated EA and the appendices fail to use the most current information, the best available science, and therefore fail to adequately analyze the ongoing and potential impacts from the use of various pesticides on the covered species and their habitats.

In addition to the information provided in 2020, below is some of the latest science on some of the pesticides currently in-use and proposed for continued use in the HCP area and as they relate to the proposed covered species. O4-18

The Service needs to provide a more comprehensive analysis of the potential impacts associated with all of the pesticides using the best and most current available science in order to comply with the ESA and NEPA. Once analyzed, some herbicides may be too risky to continue use and additional AMMs may be needed, including buffers for application to protect native and covered species, limits on the frequency of application and other issues identified through the analysis process.

**L. The HCP Fails to Address the Full Effects of Mechanical Trash Removal**

The HCP proposes continue mechanical trash removal via raking or grooming in a portion of the HCP area, including above the wrack line in the Grand Avenue and Pier Avenue entrance areas, the Post 2 trash dumpster areas, and the Post 2 south to Post 4.5. Additionally, mechanical trash removal will also occur in the open area to Post 6, which is east of the 48-acre foredune area. (HCP 2-31). .

CDFW raised the issue in their formal comments on the 2020 draft HCP (CDFW 2020) that beach grooming and raking has been shown to reduce the amount of available foraging habitat for avian and other wildlife species by creating a reduction and change in the composition and availability of invertebrates by altering the beach ecosystem in these areas. CDFW noted that invertebrate species provide an invaluable food resource to numerous populations of migrating, overwintering, nesting and foraging bird species that inhabit the HCP area and this activity may reduce or eliminate the HCP area's ability to continue to serve as a suitable stopover for migrating and overwintering birds, impacting the area's ability to continue to support the diversity and density of bird species that travel through the area and use it as an important migratory corridor. CDFW noted that mechanical trash removal in these areas could also result in permanent changes to the dune composition, further reduce the availability of potential nesting habitat for SNPL, and could increase disturbance to adjacent SNPL nesting and foraging habitat—even with the 500-foot buffer from known nest sites proposed at the time, which the current draft HCP has eliminated. CDFW stated that continued disturbance from mechanical O4-19

31 *Id.* at Table 9-2.

32 I*d.* at page 41.

trash removal could also lead to the preclusion of SNPL and other bird species from nesting and/or foraging in this area in the future.

The HCP states that mechanical trash removal would only occur above the wrack line and would not occur within vegetated areas or within any fenced closed areas where known SNPL or CLTE nesting occurs. Lagoon or creek areas would also be avoided. The HCP states that because mechanical trash removal will not occur within areas encompassed by the seasonal exclosures, direct effects on SNPL nests within the exclosure will not occur. The HCP asserts that mechanical trash removal activities are designed to avoid known seasonal nesting SNPL or CLTE and to prevent disturbances or conflicts associated with these activities. However, the HCP (page 4-30) acknowledges that SNPL are known to winter in areas where mechanical trash removal may occur, which puts SNPL at risk for impact and injury.

The HCP acknowledges that mechanical trash removal could adversely affect favorable SNPL nesting habitat (i.e., primary and secondary habitat) in the riding area by altering dune composition and topography. Specifically, mechanical trash removal could reduce micro-topography and/or organic surface materials (e.g., driftwood and campfire charcoal) that are scattered throughout the HCP area above the wrack line. (HCP 4-31). The HCP states that most mechanical trash removal will be conducted to remove litter in areas where recreation activities have been concentrated and the substrate is already highly disturbed, and that these areas have supported marginally suitable SNPL nesting habitat due to the high level of recreation; therefore, the HCP concludes that the effect will be minimal.

O4-19

The HCP states that although mechanical trash removal will occur above the wrack line, mechanical trash removal during the summer could remove scattered debris (e.g., driftwood and kelp) from the previous winter wrack line still present in the beach area above the newer wrack line, which is likely important habitat for wrack-associated beach invertebrates. (HCP 4-32). If mechanical trash removal occurs frequently, this material may not have time to naturally develop again, and species richness, abundance, and biomass of wrack associated invertebrates that are important SNPL prey resources could decline. As a result, SNPL could be impacted by a reduced prey source.

The HCP includes a number of mitigation measures which are claimed to minimize the impacts from mechanical trash removal. These include:

> AMM 106 - Mechanical trash removal will not occur in areas where any SNPL are present.
> AMM 107 - Mechanical trash removal will only occur above the highest high tide, avoid all wrack/surf cast kelp, avoid all live vegetation, and avoid lagoons and flowing creeks.
> AMM 108 - Equipment will observe all speed limits and will not exceed 10 mph.
> AMM 109 - Mechanical trash removal will not be conducted within vegetated areas or within any fenced closed areas where known SNPL nesting occurs (such as the Southern Exclosure or 48-acre foredune area) during the breeding or non-breeding season.

AMM 110 – Qualified biologists/Natural resources staff will inspect and approve the area subject to mechanical trash removal prior to each deployment. Qualified biologists/Natural resources staff will remain on site or be immediately available for monitoring purposes.
AMM 111 - In conjunction with mechanical trash removal, CDPR will implement a study to establish baseline conditions of invertebrate populations, including talitrids, and to determine the impact of mechanical trash removal on these populations. The study will, at a minimum, compare invertebrate abundance in mechanical trash removal areas to baseline conditions prior to the start of mechanical trash removal to areas where mechanical trash removal is absent. If CDPR finds a significant decline in invertebrate numbers in mechanical trash removal areas, additional measures will be implemented (e.g., habitat enhancement measures, reduction in frequency of mechanical trash removal, and/or reduction in mechanical trash removal locations).

The HCP also cites habitat enhancement measures implemented by State Parks to offset the impacts some impacts of mechanical trash removal on SNPL critical habitat. The habitat enhancement activity includes collecting wrack and placing it on the shoreline of the Southern Exclosure at the beginning of the breeding season to provide cover for nesting SNPL and inoculating the wrack with talitrids to ensure a sustainable population of wrack-associated invertebrates, which are SNPL prey, are present in main SNPL breeding and foraging area (i.e., the Southern Exclosure shoreline). (HCP at 4-218). O4-19

The HCP cites in particular AMM 110 as ensuring that mechanical trash removal will have a minimal impact on wintering SNPL foraging opportunities and the quality of their habitat. However, CDFW (2020) specifically addressed this study and additional measures: "this does not guarantee the protection of this invaluable food resource, nor does it guarantee the Project's ability to reestablish not only the abundance, but the diversity of the invertebrate population. The DEIR and HCP also do not describe nor reference whether an exhaustive literature review was conducted and whether results and conclusions could be extrapolated from previous work to further refine the proposed future study testing and methodologies." CDFW recommended that the HCP be revised to include a discussion of previous studies and literature regarding mechanical beach disturbance and impacts on invertebrate populations. CDFW (2020) stated that absent data to demonstrate the veracity of the conclusions in the HCP, the suggestion that impacts from mechanical trash removal would be short-term and temporary because the activity will only occur for a short duration "appears to be a mischaracterization" and that mechanical trash removal may have a lasting impact on bird populations and their long-term reproductive success.

## II. COMMENTS ON RECIRCULATED DRAFT ENVIRONMENTAL ASSESSMENT (EA) FOR THE HCP PLAN ACTIVITIES ASSOCIATED WITH ISSUANCE OF ENDANGERED SPECIES ACT SECTION 10(A)(1)(B) PERMIT

NEPA compliance for federal actions regarding the HCP and incidental take permit is governed by the statute and adopted agency regulations. *See* 42 U.S.C. § 4321 et seq.; 43 C.F.R. § Part 46

(Department of the Interior regulations). The Recirculated Draft EA suffers from many of the same shortcomings as the 2025 Draft HCP regarding the lack of a meaningful range of alternatives, failure to address incidental take in the form or harassment, inadequate discussion of mitigation and monitoring, and others.[33]

The National Environmental Policy Act (NEPA) is our bedrock environmental law. In enacting NEPA, Congress recognized the profound impacts of human activities on the environment and declared a national policy "to create and maintain conditions under which man and nature can exist in productive harmony." 42 U.S.C. § 4331(a). NEPA has "twin aims:" obligating the agency "to consider every significant aspect of the environmental impact of a proposed action," and ensuring "that the agency will inform the public that it has indeed considered environmental concerns in its decisionmaking process." *Balt. Gas & Elec. Co. v. NRDC*, 462 U.S. 87, 97 (1983).

NEPA promotes its sweeping commitment to "prevent or eliminate damage to the environment and biosphere" by focusing government and public attention on the environmental effects of proposed agency action. 42 U.S.C. § 4321. With NEPA, Congress mandated that federal agencies take a "hard look" at the environmental consequences of their actions and engage practicable measures to prevent environmental harm when engaging in agency action. *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976); *New York v. Kleppe,* 429 U.S. 1307, 1310–1311 (1976) (The Supreme Court "unanimous in concluding that the essential requirement of the NEPA is that before an agency takes major action, it must have taken 'a "hard look" at environmental consequences.'").

Simultaneously, FWS's NEPA review and final decision must conform to the Administrative Procedure Act ("APA"). This includes engaging in "reasoned decisionmaking," ensuring that a project is not only within its lawful authority, but the "process by which it reaches that result must be logical and rational." *Michigan v. EPA*, 576 U.S. 743, 750 (2015).

Further, Congress incorporated within NEPA "action-forcing" provisions which require agencies to follow specific procedures in order to accomplish any federal project. *Kleppe*, 427 U.S. at 409. NEPA requires, among other things, that FWS describe the purpose and need for the proposed action; consider a range of reasonable alternatives; and conduct environmental analysis of the direct, indirect, and cumulative impacts of proposed actions; and assess mitigation measures to reduce those impacts.

An EA may be relied on only when a proposal does not have a reasonably foreseeable significant effect on the quality of the human environment, or if the significance of such effect is unknown.

[33] The Center also incorporates by reference and is resubmitting the two sets of comments submitted to State Parks and FWS in 2020 regarding the Draft Environmental Impact Report for the HCP and the earlier draft EA for the 2020 HCP. Many of the shortcomings in those documents also show that the EA is inadequate to meet the NEPA requirements.

42 U.S.C. § 4336(b)(2). Here, because the impacts to listed species and their habitats is significant, FWS should prepare a full environmental impact statement (EIS).

## A. The EA Includes an Overlay Narrow Statement of Purpose and Need

NEPA mandates that "[e]ach environmental document shall include a statement of purpose and need that briefly summarizes the underlying purpose and need for the proposed agency action." 42 U.S.C. § 4336a.(d). A project's purpose and need must be appropriately framed in order to ensure fair and adequate environmental review.

The EA's Purpose and Need statement is framed in a manner that improperly suggests that the primary purpose of the action is to rationalize and legitimize State Parks' authorization of past and ongoing unpermitted take of federally listed species rather than to avoid or minimize this take.

The Purpose and Need statement should instead provide that the primary purpose of the action—development of a Habitat Conservation Plan-- is the conservation of listed species. Section 3(2) of the ESA defines "conservation" as "the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to [the ESA] are no longer necessary." The Purpose and Need Statement should expressly identify recovery as a purpose of the action, and the EA should evaluate alternatives that promote recovery of SNPL, CLTE, and other federally listed species.

The Purpose and Need should also have taken into account the status of the area as an Environmentally Sensitive Habitat Area (ESHA) under the Coastal Act. (CCC. 2021). Because the EA fails to explain the status of the area as it fails to properly address the impacts of the proposed activities to that habitat in the context of the underlying status and baseline.

The Coastal Commission 2021 report explained that the remaining intact habitats provide an opportunity to maintain, restore and conserve this unique and rare ecosystem with only modest remediation *if disruptive activities cease*:

> 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.

(CCC. 2021 at iii.) The report explains that OHV riding denudes dune habitats such that "where riding occurs is a zone of no vegetation, unstable dune forms, and constantly moving sand. Interspersed are vegetated dune islands where riding is prohibited;" and that in the remaining existing habitat linkages "OHV riding, that occurs during the day and night, disrupts these linkages among habitats." (*Id*. at 5.) The EA and HCP do not even mention this detailed scientific report.

### B. The EA Utilized the Wrong Baseline.

NEPA requires that FWS understand and disclose the environmental baseline in order to analyze a proposed project's impacts and the impacts of alternatives.

Federal courts emphasize the importance of establishing the environmental baseline.

> When conducting an environmental analysis of a proposed action under NEPA, an agency compares the action's projected environmental effects to the existing condition of the environment. Through that comparison, the agency can ascertain the magnitude of the proposed action's environmental impacts. The agency's choice of the baseline for comparison matters a great deal. If the baseline is artificially high, the agency might erroneously conclude that even highly disruptive actions will have minimal incremental environmental effects.

*Marin Audubon Soc'y v. FAA*, 121 F.4th 902, 915-16 (D.C. Cir. 2024). *See also Great Basin Res. Watch*, 844 F.3d 1095, 1101 (9th Cir. 2016) ("Without establishing the baseline conditions ... before a project begins, there is simply no way to determine what effect the project will have on the environment and, consequently, no way to comply with NEPA.") (citations and quotations omitted).

The Recirculated EA assumes (p. 10) that "[a]ny environmental impacts that may be associated with current park operations established prior to the 2021 modified operations in response to CDP litigation resolved in July 2025 are part of the environmental setting." This approach is inadequate for two reasons. First, it takes as the baseline for environmental analysis an illegal condition. Accordingly, the EA finds no new impacts associated with the condition that the federal action is supposed to address. Second, this approach ignores the actual physical conditions that exist at Oceano Dunes SVRA following its closure to vehicles on May 1, 2020 due to COVID-19 measures, and that have continued since its partial re-opening in November 2020, and full re-opening sometime later. In particular, the Center and others have documented extensive SNPL use of areas outside exclosures following the initial closure. *See* CCC. 2021 at 19; Center for Biological Diversity. 2020a, 2020b, 2020c, 2020d.

The EA also fails to explain the status of the area as an Environmentally Sensitive Habitat Area (ESHA) under the California Coastal Act. As the Coastal Commission report explained:

> 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.

The continuation of existing SVRA activities is likely to result in the future take of listed species, and this take must be considered a new consequence of the proposed action, not just part of the baseline.

## C. The EA Does Not Evaluate a Reasonable Range of Alternatives

The FWS must study, develop, and describe technically and economically feasible alternatives. NEPA requires federal agencies to thoroughly explore and objectively assess all reasonable alternatives to a proposed plan of action. *See NRDC v. United States Forest Serv.*, 421 F.3d 797, 813 (9th Cir. 2005); *City of Carmel-by-the-Sea v. United States Dep't of Transp.*, 123 F.3d 1142, 1155 (9th Cir. 1997). When an unresolved conflict exists over the use of resources, the FWS should study, develop, and describe appropriate alternative. 42 U.S.C. § 4332(H). The purpose and need statement dictates the range of alternatives and what is "reasonable" depending on the purpose and need for the proposed action, which as explained above was unreasonably narrow and focused on extending and expanding the harmful activities rather than on need for conservation and the purpose of the HCP itself. NEPA requires federal agencies to thoroughly explore and objectively assess all reasonable alternatives to a proposed plan of action. *See NRDC v. United States Forest Serv.*, 421 F.3d 797, 813 (9th Cir. 2005); *City of Carmel-by-the-Sea v. United States Dep't of Transp.*, 123 F.3d 1142, 1155 (9th Cir. 1997).

The No Action Alternative should not include unlawful activities that take listed species. Instead, the EA simply assumes that under a No Action Alternative unlawful activities "would continue" or "would have the potential to continue" if no ITP was issued.

> Under the No Action Alternative (section 2.1), existing activities identified in Appendix A, Table A-3, would continue. Effects on Federal-listed fish and wildlife species from existing park operations that have occurred in the past would have the potential to continue in the future. Under the No Action Alternative, the Service would not issue an ITP for SNPL, CLTE, SWPT, CRLF, WSF, or tidewater goby, and all take incidents occurring from park operations in the HCP area would be unauthorized. As a result, the No Action Alternative

> would not resolve unauthorized take occurring in the HCP area, leaving CDPR operations out of compliance with FESA.

(2025 Recirculated EA at 13.) This is incorrect. There is nothing to "resolve" about the ongoing unauthorized take. A court has already found that CDPR authorization of motorized activities that take SNPL at the ODSVRA is in violation of the ESA. Order Granting Pl.'s Mot. for Summ. J., *Center for Biological Diversity v. Quintero et al.,* Case No. 2:20-cv-09965-AH, Dkt. No. 64 (C.D. Cal. Nov. 20, 2025). Therefore, FWS cannot assume that the unlawful activities will simply continue as they have in the past. This fundamental flaw undermines the entire analysis in the Recirculated EA.

The EA does not consider the same set of alternatives as the HCP, which leaves some of the HCP alternatives unevaluated under NEPA. (*See* Recirculated EA at 4-9.) Specifically, the EA does not evaluate the "project by project permitting" or "increased patrols and staffing" alternatives found in the HCP. In addition, the HCP alternative "Maintain Northern Exclosure Boundary Alternative" is split into two alternatives in the EA—one for maintaining the exclosure seasonally and one for a permanent year-round southern exclosure. (Id. at 7-9.) This lack of consistency between the HCP and EA makes both fail as informational documents and undermines FWS' claim that it is thoroughly evaluating alternatives.

Because the Purpose and Need for the action is narrowly defined in terms of facilitating a permit for State Park's existing Oceano Dunes SVRA activities, feasible and environmentally superior alternatives have been excluded from consideration. The Recirculated EA at 9-10 refers the reader to Appendix B which lists the states that alternatives that were considered but rejected including "No Take Park Operations," "Changes in Oceano Dunes SVRA Access," "Restricted Riding Times" (including "Night Riding closures" and "Seasonal Closures to Motorized Recreation," and "Reduced Vehicle Use Limits." The conclusory statements that these alternatives are infeasible or incapable of avoiding significant impacts are insufficient to show that they should have been eliminated from consideration. Indeed, the primary explanation for their rejection appears to be the EA's improperly narrow Purpose and Need statement which elevates motorized use over conservation.

As required by NEPA, the EA must evaluate a reasonable range of alternatives to the proposed action. *Pacific Marine Conservation Council v. Evans*, 200 F. Supp. 2d 1194, 1206 (N.D.Cal. 2002). Here, the EA has excluded reasonable alternatives that would avoid or lessen the taking of listed species, and that would promote the conservation and recovery of these species, including but not limited to alternatives that would avoid take, alternatives that would restrict riding times including at night and during dusk or low-light conditions, and alternatives that would reduce vehicular use of Oceano Dunes SVRA.

**FWS Ignores Significant Impacts**

The Recirculated EA includes a section entitled "Definition of Impact Intensities" which (Recirculated at 11-12) which includes mortality and injury in Minor and Moderate as well as, presumably, the Major category. The FWS claims that:

> Both lethal and nonlethal biological impacts can be *minor* depending on the frequency, duration, and location of the activity. Lethal impacts include both direct and indirect mortality. Non-lethal impacts include injury, capture, and/or disturbance to such a degree that it could result in injury.
> . . .
> Both lethal and non-lethal biological impacts can be *moderate* depending on the frequency, duration, and location of the activity. Lethal impacts include both direct and indirect mortality. Nonlethal impacts include injury, capture, and/or disturbance to such a degree that it could result in injury.
>
> Major – Substantial impact or change in a resource would occur that is easily defined and highly noticeable and that would measurably alter the condition of the resource; the integrity of the resource may not remain intact.

(Id. at 11, 12 (emphasis added)). Even utilizing the "moderate" definition (which may or may not be rational), the impacts at issue here are significant—e.g., take of SNPL by harassment, injury and death--- occur with great frequency (daily in most times of year), occur year round and are in designated critical habitat for the species, these factors clearly show that the impacts are at minimum "moderate". Further, these impacts clearly fit within the "major" definition as well because the OHV riding has measurably altered the condition of the habitat and the only way any resource integrity has been maintained for the SNPL (and also CLTE and dunes plants) is through major alterations to the habitat in the form of fenced exclosures. The fact that FWS still repeatedly concludes in the Recirculated EA that all of the impacts are not significant is contrary to the facts, the law and its own definitions.

### D. FWS Must Incorporate Sound Science and Take a Hard Look at the Foreseeable Direct, Indirect, and Cumulative Impacts of the Proposed Action.

FWS can only take the required 'hard look,' and determine avoidable, irreversible, or excessive degradation by utilizing the best available scientific data and analysis. NEPA requires that all federal agencies:

(i) "utilize a systematic, interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision-making which may have an impact on man's environment." 42 U.S.C. § 4332(A);

(ii) "ensure the professional integrity, including scientific integrity, of the discussion and analysis in an environmental document." *Id.* § 4332(D);

(iii)"make use of reliable data and resources in carrying out this Act." *Id.* § 4332(E); and

(iv)"initiate and utilize ecological information in the planning and development of resource-oriented projects." *Id.* § 4332(K).[34]

Reviewing courts assess whether an agency EA to "has adequately considered and elaborated the possible consequences of the proposed agency action when concluding that it will have no significant impact on the environment, and whether its determination that no EIS is required is a reasonable conclusion." *Cascadia Wildlands v. United States BLM*, 153 F.4th 869, 902 (9th Cir. 2025) (internal citations omitted); *see Diné Citizens Against Ruining Our Env't v. Haaland (Diné),* 59 F.4th 1016, 1034 (10th Cir. 2023). This requirement is known as the "hard look." *Id.; Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976). While an EA requires a less in-depth analysis than an EIS, BLM must still weight available information, analysis, and the potential for environmental impacts, in making informed decisions to implement an action or alternative. *Kleppe* at 410 n.21. When taking a hard look at potential impacts, and ultimately deciding whether or not the action may have significant environmental impacts, agencies must take into account the direct, indirect, and cumulative impacts of the action. *Diné* at 1034. Court decisions interpreting the NEPA shortly after its adoption and CEQ guidance before the adoption of Council's 1978 regulations reached this conclusion. *See Hanly v. Kleindienst*, 471 F.2d 823, 830-31 (2d Cir. 1972); *Minn. Pub. Interest Research Grp. v. Butz*, 498 F.2d 1314, 1322 (8th Cir. 1974).

NEPA requires that BLM include cumulative impacts analyses for all analyzed resource values. Courts have found in NEPA's statutory text the requirement to consider cumulative impacts and "focus concern on the 'big picture' relative to environmental problems." *Swain v. Brinegar,* 517 F.2d 766, 775 (7th Cir. 1975). In *Swain*, the Seventh Circuit observed NEPA "expressly requires recognition of the worldwide and long-range character of environmental problems." 517 F.2d at 775. Thus, NEPA recognizes that "each 'limited' federal project is part of a large mosaic of thousands of similar projects and that cumulative effects can and must be considered on an ongoing basis." *Id*; *see also Kleppe*, 427 U.S. 390, 409-410 (1976) ("comprehensive impact statement may be necessary" for agency to meet its duties under NEPA; "[w]hen several proposals … will have cumulative or synergistic environmental impact upon a region are pending concurrently before an agency, their environmental consequences must be considered together").

To that end, courts have also recognized that cumulative impacts analysis is necessary to put a proposed action's effects into meaningful context and fulfill NEPA's informed decisionmaking purpose. In other words, a cumulative impacts analysis is integral to ensuring that an agency has taken a "hard look" at the environmental consequences of a proposed action. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989).

[34] *See also* CEQ Feb. 2025 Guidance at 2-3 (describing provisions of NEPA following Congress's 2023 amendments).

In *Hanly v. Kleindienst*, the court stated that agencies are required to consider "the absolute quantitative adverse environmental effects of the action itself, including the cumulative harm that results from its contribution to existing adverse conditions or uses in the affected area." *Id.* at 830–31. "[E]ven a slight increase in adverse conditions that form an existing environmental milieu may sometimes threaten harm that is significant. One more factory polluting air and water in an area zoned for industrial use may represent the straw that breaks the back of the environmental camel." *Id.* at 831; *see also Minn. Pub. Int. Rsrch. Grp.* at 1322 ("There has been increasing recognition that man and all other life on this earth may be significantly affected by actions which on the surface appear insignificant."); *Nat. Res. Def. Council v. Callaway*, 524 F.2d 79, 88 (2nd Cir. 1975) (Congress intended "to instill in the environmental decisionmaking process a more comprehensive approach so that long term and cumulative effects of small and unrelated decisions could be recognized, evaluated and either avoided, mitigated, or accepted as the price to be paid for the major federal action under consideration."); *Swain v. Brinegar II*, 542 F.2d 364, 370 (7th Cir 1976) (finding illegal segmentation of highway project, because "the combined statements of course do not consider the overall environmental effects of the 42-mile freeway."); *id.* at 368 ("although the individual environmental impact might be slight, the cumulative consequences could be devastating"); *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 994 (9th Cir. 2004) ("Cumulative impacts of multiple projects can be significant in different ways. The most obvious way is that the greater total magnitude of the environmental effects … may demonstrate by itself that the environmental impact will be significant. Sometimes the total impact from a set of actions may be greater than the sum of the parts."). Accordingly, for decades courts have held that NEPA reviews "must give a realistic evaluation of the total impacts and cannot isolate a proposed project, viewing it in a vacuum." *Grand Canyon Trust v. FAA*, 290 F.3d 339, 342 (D.C. Cir. 2002); *see also Healthy Gulf v. FERC*, 107 F.4th 1033, 1043 (D.C. Cir. 2024) ("NEPA's mandate to consider the cumulative effects of a project makes sense: A project's incremental emissions do not exist in a vacuum, and requiring consideration of the overall state of the surrounding environment helps ensure that agencies do not overlook the full impact of those emissions.").

Here, FWS and CDPR have ignored some of the best scientific information including the Coastal Commission report (CCC.2021), and evidence submitted to the agencies by members of the public (E.G. Center for Biological Diversity. 2020a, 2020b, 2020c, 2020d; CDFW.2020; Smallwood 2026) regarding the impacts to listed species in the HCP area. As a result, the EA is inadequate (as is the HCP).

## E. An EIS Must be Prepared

NEPA requires federal agencies to "issue an environmental impact statement with respect to a proposed agency action requiring an environmental document that has a reasonably foreseeable significant effect on the quality of the human environment." 42 U.S.C. § 4336 (b)(1). In reviewing an EIS, the Bureau must "ensure that to the fullest extent possible agency decisionmakers have before them and take into proper account a complete analysis of the project's environmental impact." *Davis v. Coleman*, 521 F.2d 661, 673 (9th Cir. 1975) (citations and quotations omitted). *the degree to which the action may adversely affect a species listed under the ESA or its critical habitat is significant*

Several factors here show that the approval of the HCP and issuance of an ITP could significantly affect the environment and an EIS should be prepared. The EA's impact analysis regarding impacts to listed species and habitat itself shows that an EIS must be prepared.

The EA uses an improper baseline and understates the action's likely impacts to SNPL and CLTE, as we discuss in our comments on the HCP above. The EA fails to acknowledge that because the proposed HCP will take listed species and impact habitat and none of those impacts are fully mitigated, the HCP will therefore have significant effects. Instead the EA simply concludes over and over that there will not be significant impacts with mitigation.
In addition, the EA does not evaluate the action's consistency with recovery actions specified in the recovery plans for SNPL, CLTE, and other listed species, despite its potential to conflict with and actively impede these actions, and therefore to impair the conservation and recovery of these species.

In addition to existing impacts to critical habitat under the no action alternative, the HCP proposes to open up additional SNPL critical habitat to motorized recreation and camping at least part of the year plus additional acres of SNPL critical habitat when or if they remove all or part of the 6 Exclosure. All of these significant impacts to critical habitat need to be considered in an EIS.

The EA fails to address the unique characteristics of this site and its significance of the impacts to ecologically critical areas. The Oceano Dunes SVRA includes designated critical habitat and is in proximity to protected areas that may be affected by the proposal including Pismo Dunes Natural Preserve and Guadalupe-Nipomo Dunes National Wildlife Refuge. The area is also defined as environmentally sensitive habitat areas (ESHA) under state law. The EA downplays the potentially significant impacts, relies on a flawed view of the baseline, and overstates the efficacy of mitigation measures to reduce impacts in an attempt to ignore the significance of impacts to these resources. As a result the EA fails to address the potentially significant impacts to these areas from the proposed HCP activities and on this basis as well an EIS is needed.

As noted above, both the California Coastal Commission and the California Department of Fish and Wildlife have raised concerns with the HCP regarding compliance with state laws, including for the protection of environmentally sensitive habitat areas (ESHA), nesting birds, fully protected species, and other resources. (CDFW 2020; CCC 2020a). An EIS is needed to address these threatened violations of law, which are also significant under NEPA.

In addition, the off-road vehicle activities significantly impact public health or safety by impairing air quality and, despite the EA's facile conclusions, the mitigation measures do not reduce those impacts below a level of significance. For these reasons and more, an EIS must be prepared.

## III. COMMENTS ON THE RECIRCULATED DRAFT EIR

The Recirculated DEIR suffers from many of the same shortcomings as the Recirculated EA and, further, fails to meet the substantive requirements of CEQA. These include, but are not limited to, utilizing a baseline for analysis that includes unlawful activities, ignoring impacts of harassment on shorebirds, failing to fully identify and analyze impacts of motorized activities and dune riding on species and habitats, and failing to consider alternatives that would avoid and minimize impacts. For these and other reasons, the EIR fails to meet CEQA's requirements. These CEQA comments, as noted above, incorporate by reference and provide as attachments, the Center's earlier comments on the Draft EIR and Draft PWP (the latter of which is no longer proposed).

### *A. Project Description and Baseline or Environmental Setting*

The Recirculated DEIR continues to include as part of the environmental setting all of the activities currently ongoing in the Project area although some have been found unlawful under the ESA (as explained above), and for which there is no State law permit either in the form of an approved NCCP. This means that the identification and analysis of impacts is truncated from the outset and the DEIR has largely ignored many of the significant impacts of the Project which the HCP is seeking to "cover" and which a future NCCP could potentially cover. As a result the DEIR is misleading and inadequate. O4-20

### *B. Identification of Impacts is Incomplete*

The DEIR excludes consideration of harassment as part of the impacts of the Project. Regardless of whether harassment is a form of take under the FESA or CESA (*see* DEIR at 6-2, 6-3), or the regulatory landscape, harassment of shorebirds caused by noise, vibration, dust and other impacts of motorized riding in their habitat is a real, on the ground biological impact that must be considered by State Parks in the DEIR, but was not. But the DEIR admits that harassment occurs. "Documented incidents of CLTE and SNPL take (mortality, injury, harassment) have occurred from vehicle strike, visitor disturbance, and from park management (see Table 6-6 and Table 6-7)." (DEIR at 9-2 (describing considered but rejected alternative of "No Take Park Operations.") O4-21

The DEIR also fails to identify the impacts to *ESHA.* All habitat in Oceano Dunes SVRA is defined as an Environmentally Sensitive Habitat Area (ESHA) by the Coastal Commission and ESHA must be protected. (Pub. Res. Code § 30240; *Bolsa Chica Land Trust v. Superior Court* (1999) 71 Cal. App. 4th 493, 507-508.) As the California Supreme Court recently explained:

> ESHA, however, are "rare or especially valuable" habitat areas in the coastal zone, given enhanced protection by the Coastal Act. (Pub. Res. Code § 30107.5.) They must be "protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas." ([*Id.*] § 30240, subd. (a).)

O4-22

(*Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal. 5th 918, 936.) The Supreme Court held that the City's CEQA review in that case "fell short by failing to account for the Coastal Act's ESHA protections" and "also ignored the practical reality that the project must ultimately pass muster under the Coastal Act." (*Id.* at 941-42.)

The Recirculated Draft EIR falls short in its evaluation of ESHA—trying to devalue the current habitat in an attempt to ignore impacts to this critical resource. For example, noting that the impactful uses had predated the exclosures, the DEIR attempts to minimize and ignore the significant impacts to ESHA from removing the East Boneyard and Exclosure 6 protections and allowing riding in these areas. (DEIR at 4-22 to 4-24). This builds on the DEIR's use of an unlawful baseline to justify continued impacts and thereby the DEIR fails to identify or analyze this and other significant impacts to resources from the Project.

Similarly, regarding the proposal for mechanical trash removal, the DEIR understates its impacts which also include driving heavy equipment in the ESHA and has in the past been used in the wrack line where it impacts key foraging habitat:

> General Facilities Maintenance (CA-21) - Mechanical Trash Removal
> CA-21 mechanical trash removal involves periodic raking of the sand surface to a depth of 2 to 6 inches to remove debris and organic material. Mechanical trash removal does not involve grading, removal, or harvest of vegetation, change the density or intensity of use of land, or introduce solid material into the environment. Mechanical trash removal would be infrequent and occur only in dry beach areas of highest recreational use. Mechanical trash removal would not impact special-status plants or wildlife nor substantially alter critical habitat (Biology section 6.3). Given CDPR's AMMs, such as conducting mechanical trash removal only above the highest tide, avoiding active wrack and surf cast kelp, avoiding all live vegetation, avoiding lagoons and flowing creeks, the impact on ESHA is not significant. Mechanical trash removal is consistent with Coastal Act section 30240.

O4-22

DEIR at 4-22.

In light of the EIR's incomplete impact analysis, the DEIR fails to provide mitigation for impacts to critical habitat or ESHA.

### *C. Alternatives Fail to Address Needed Avoidance and Minimization*

The Recirculated DEIR addresses only 4 alternatives in detail. "No Project Alternative; 2) Reduced Disturbance in Dust Emission Areas; 3) Permanent Year-Round Exclosures; and 4) Reduced Vehicle Use Limits." (DEIR at S-11 to S-13.) None of the alternatives address avoidance of harassment, limiting night driving, expansion of protections for nesting birds, or provide other avoidance measures that would substantially reduce significant impacts.

O4-23

The "No Take Park Operations." (DEIR at 9-2 to 9-3) is summarily rejected from consideration although it would avoid significant impacts. This alternative should have been fully considered. Other alternatives that are summarily rejected could provide some avoidance of impacts including the Night Closure and Seasonal Closure to Motorized Recreation. (DEIR at 9-6 to 9-8.)

In particular, the EIR should have fully considered the Seasonal Closure to Motorized Recreation alternative which would fully closed some areas to riding seasonally which the DEIR admits would avoid some take of SNPL, even if not all impacts. (DEIR at 9-7) And that is without considering the reduction in harassment.

In addition, the EIR should have considered an alternative that would close some areas year-round to motorized recreation to at least reduce harassment of shorebirds via noise, vibrations and dust, rather than provide fenced exclosures with riding surrounding them which subjects these species to harassment year-round including during breeding, fledging and overwintering.

O4-23

While Alternative 4 could reduce the intensity and frequency of some of the significant impacts it does not significantly reduce the fact that of daily year-round impacts to shorebirds including harassment which would still occur year-round.

Alternative 3 would not propose some of the reductions in protection in the HCP—the elimination of the East Boneyard and Exclosure 6 (DEIR at 9-14), it is essentially the same as the No Action Alternative because most of the exclosures have been kept in place year round due to other factors (staffing etc.) As noted above, a full closure of the nesting areas to motorized vehicle use, or even part of the area, would provide for meaningful avoidance and those alternatives should have been fully considered but were not.

Overall, the Alternatives considered provide insufficient avoidance of the significant impacts of the Project and very little range.

***D. The EIR fails to Address how the Draft HCP undermines State Parks' Public Trust Obligation***

State Parks has a public trust obligation to protect waters and wildlife. Pursuant to statute (as well as common law) the waters and wildlife resources of the State of California are held in trust for the people of the State. (Fish & Game Code §711.7(a); *see also* Fish & Game Code § 1801 [it is "the policy of the state to encourage the preservation, conservation, and maintenance of wildlife resources under the jurisdiction and influence of the state"], *Ex Parte Maier* (1894) 103 Cal. 476, 483; *People v. Harbor Hut Rest.* (1983) 148 Cal. App. 3d 1151, 1154, *Betchart v. California State Dept. of Fish and Game* (1984) 158 Cal. App. 3d 1104, 1106.)

O4-24

All state agencies are obliged to protect this public trust and the California Legislature has specifically required all state agencies, including State Parks, to "conserve, protect, restore and enhance" any endangered or threatened species and their habitat when undertaking any state action, such as issuance of a permit or adoption of a plan. (Fish & Game Code §§ 2052, 2055; *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 125.) State Parks, therefore, has an affirmative statutory public trust duty to ensure the conservation, preservation, recovery and enhancement of threatened, endangered, and candidate species and their habitats in developing and adopting an HCP.

The public trust doctrine "places on the state the responsibility to enforce the trust." (*Center for Biological Diversity, et al., v. FPL Group, Inc.* (2008) 166 Cal App. 4th 1349, 1368, 1361 ["[I]t is clear that the public trust doctrine encompasses the protection of undomesticated birds and wildlife. They are natural resources of inestimable value to the community as a whole. Their protection and preservation is a public interest."].) This duty carries with it the "implied power to do everything necessary to the execution and administration of the trust." (*People v. California Fish Co*. (1913) 166 Cal. 576, 597.) The Supreme Court has identified this substantive duty "to protect the people's common heritage," holding that an agency may surrender "that right of protection only in rare cases when the abandonment of that right is consistent with the purposes of the trust." (*Nat'l Audubon Soc'y v. Superior Court* (1983) 33 Cal.3d 419, 441.)

In developing the HCP State Parks should have ensured that it is meeting its public trust obligation to use "all necessary methods and procedures" to conserve, protect, restore and enhance listed species and to protect biologically sustainable populations of other species. (Fish & Game Code §§ 2052, 2055, 2061.)

O4-24

Further, State Parks' consideration of impacts to public trust wildlife resources in the Recirculated Draft EIR must be informed by the Department of Fish and Wildlife and the Coastal Commission, which each have special responsibilities as trustees.

For example, as detailed above, the Coastal Commission determined that the entire Oceano Dunes SVRA is an Environmentally Sensitive Habitat Area (ESHA) (CCC.2021.) Because OHV use is not resource dependent (meaning it can occur outside of the coastal zone), it can only be authorized if that use is consistent with protection of the ESHA values. And the Commission has specifically addressed the need to end vehicle crossings of Arroyo Grande Creek to protect water and fish resources. Regardless of the status of any legal challenges to the Commissions orders, State Parks cannot lawfully adopt an HCP that destroys public trust resources in wildlife and water or that violates other California coastal protection laws, including protection of ESHA and other conservation of other coastal values.

The Department of Fish and Wildlife is responsible as the trustee for fish and wildlife resources. (Fish and Game Code § 1802.) As part of the CEQA review process, the Department discharges its public trust obligations through its role as a CEQA "trustee agency" and/or a "responsible agency" when permits or agreements from the Department are required. During CEQA review, the Department is required to "consult with lead and responsible agencies and shall provide, as

available, the requisite biological expertise to review and comment upon environmental documents and impacts arising from project activities, as those terms are used in [CEQA].” (Fish and Game Code § 1802.) In the CEQA process the Department is charged with using its biological expertise to “focus on any shortcomings” in the environmental review. (14 Cal. Code Regs § 780). Thus, pursuant to statute, the Department is obligated to provide its requisite biological expertise to review and comment upon environmental documents and the significance of any impacts to state protected species and other wildlife resources arising from proposed project activities. State Parks must consider the Department’s expertise regarding impacts to species and trust resources in the draft Recirculated HCP.

O4-24

The Draft HCP should not be adopted based on the deficiencies identified in the Recirculated Draft EIR because it does not sufficiently protect public trust resources and State Parks has not ensured that it is meeting its public trust obligation to use “all necessary methods and procedures” to conserve, protect, restore and enhance listed species and to protect biologically sustainable populations of other species. (Fish & Game Code §§ 2052, 2055, 2061.)

**IV. ENDANGERED SPECIES ACT COMPLIANCE**

An HCP is supposed to be *conservation* plan. As noted, the ESA defines “conservation” to mean promoting the recovery of listed species. 16 U.S.C. 1532(3). Yet this HCP *reduces* existing conservation measures for SNPL and CLTE, including by allowing expanded vehicular use in areas currently protected by seasonal exclosures. It fails to qualify as a conservation plan under the ESA.

Section 10(a)(2)(A) of the ESA provides the standards the HCP applicant must meet, including information about impacts of proposed take, measures to minimize and mitigate impacts, and alternatives to reduce or minimize take:

No permit may be issued by the Secretary authorizing any taking referred to in paragraph (1)(B) unless the applicant therefor submits to the Secretary a conservation plan that specifies—

O4-25

> (i) the impact which will likely result from such taking;
> (ii) what steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps;
> (iii) what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized; and
> (iv) such other measures that the Secretary may require as being necessary or appropriate for purposes of the plan.

16 U.S.C. 1539(a)(2)(A). The 2025 Draft HCP does not meet these criteria, as among other things, it (1) does not fully disclose the impacts that will result from the takings (and far underestimates the taking by ignoring harassment and the best available science as detailed above); (2) does not demonstrate that all feasible steps have been taken to minimize and mitigate the takings; and (3) does not evaluate feasible alternatives that would minimize or avoid the takings.

In addition, ESA section 10(a)(2)(b) requires the Secretary of the Interior to make specific findings if it approves in HCP:

> If the Secretary finds, after opportunity for public comment, with respect to a permit application and the related conservation plan that—
>
> (i) the taking will be incidental;
> (ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;
> (iii) the applicant will ensure that adequate funding for the plan will be provided;
> (iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
> (v) the measures, if any, required under subparagraph (A)(iv) will be met;
> and he has received such other assurances as he may require that the plan will be implemented, the Secretary shall issue the permit. The permit shall contain such terms and conditions as the Secretary deems necessary or appropriate to carry out the purposes of this paragraph, including, but not limited to, such reporting requirements as the Secretary deems necessary for determining whether such terms and conditions are being complied with.

O4-25

In particular, as detailed above, the 2025 Draft HCP does not support the required findings that the applicant will minimize and mitigate the impacts of the proposed take to the maximum extent practicable – indeed the plan is designed to actually increase impacts to listed species and habitats rather than reduce them—and that the takings will not appreciably reduce the likelihood of the survival and recovery of the affected species in the wild.
In addition, ESA section 7(a)(2) provides that the USFWS may not approve the HCP if it is likely to result in the destruction or adverse modification of critical habitat. As discussed above, in addition to ongoing unpermitted impacts to critical habitat under , as noted above the 2025 Draft HCP proposal to open up "East Boneyard (approximately 47 acres) and incremental elimination of 6 Exclosure (62
acres) could result in the permanent loss of up to 109 acres of protected breeding habitat" which is also critical habitat. (2025 Draft HCP at 4-101.) Vegetation planting for dust control while important, also affects significant acreage within the SNPL critical habitat. The HCP will also result in the destruction, adverse modification, and net loss of designated critical habitat for La Graciosa thistle. The 2025 Draft HCP would thus result in the destruction and adverse modification of critical habitat, with a net loss of such habitat. In this way as well, the proposed 2025 HCP fails to meet the requirements of the ESA.

## IV. CONCLUSION

The 2025 draft HCP does not meet the standards for issuance of an ITP for the proposed covered activities that have the potential to impact federally listed species in a variety of ways and undermine recovery of listed at the Oceano Dunes. Rather than provide a comprehensive

O4-26

conservation plan that will improve the status of listed species affected by the covered activities, the 2025 draft HCP cynically proposes to increase the mortality of the covered species as the result of vehicular activities, reduce existing conservation and further fragment, degrade, and destroy critical habitat, breeding habitat, and other habitat. The 2025 draft HCP appears designed to undermine the recovery gains achieved in the past for the covered species rather than support survival and recovery into the future. For these reasons and many others stated above, the Service cannot approve the HCP or issue a ITP authorizing the take of any of the listed species as proposed in the HCP. O4-26

Please do not hesitate to contact us with any questions about this comment letter.

*/s/ Lisa T. Belenky*

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CENTER for BIOLOGICAL DIVERSITY
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***Via Electronic Mail***

June 1, 2020

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**Re: Comments on Oceano Dunes District Draft HCP and Draft EIR**

Dear Mr. Glick:

These comments are timely submitted on behalf of the Center for Biological Diversity (the "Center") regarding the California Department of Parks and Recreation (CDPR), Oceano Dunes District Draft Habitat Conservation Plan (Draft HCP) and Draft Environmental Impact Report (DEIR). The Notice of Availability was issued by the CDPR on February 24, 2020, and a subsequent notice was issued on May 13, 2020 extending the public comment period to June 1, 2020.

The Center is a non-profit, public interest environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has over 1.7 million members and online activists throughout California and the United States. The Center has worked for many years to protect imperiled plants and wildlife, open space, air and water quality, and overall quality of life for people and wildlife in San Luis Obispo County and has been advocating for greater protections of the species and habitats in the Pismo Beach State Park and Oceano Dunes State Vehicle Recreation Area for over a decade.

## I. THE ODD DRAFT EIR FAILS TO MEET THE REQUIREMENTS OF CEQA

### A. Baseline/environmental setting is unclear/misleading

Since at least 2001, the SVRA has documented ongoing nesting and, unfortunately, mortalities of snowy plovers and California least terns, including mortalities from proposed covered activities. The DEIR includes the mortalities from proposed covered activities as part of the baseline, however, baseline should not include ongoing illegal "take".



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The DEIR fails to analyze impacts from the current activities that have been ongoing for years to listed species, federally designated critical habitat and ESHA. Instead, the DEIR states "The majority of HCP covered activities presently occur in the HCP area and have been occurring for decades… The HCP does not propose changes to these existing activities; therefore, there are no new impacts associated with these existing covered activities; these activities do not change the environmental baseline and therefore are not further considered in this impact analysis. (DEIR at pg.6-81 to 6-82). Just because an activity has been occurring for decades does not eliminate the need to analyze if the activities are causing impacts to species. In fact, the illegal ongoing documented mortalities of snowy plovers from CDPR-allowed activities was the incentive for our organization's 60-day notice letter to CDPR on July 19, 2017 for violations of the Endangered Species Act and unauthorized take of plovers..

The DEIR and HCP need to analyze the "take" of species and avoid, minimize and if necessary mitigate the impacts from ongoing activities. While the CDPR is currently implementing numerous Avoidance and Minimization Measures (AMMs) for a variety of activities that impact species, the current activities allowed at the SVRA in particular are impacting listed species and federally designated critical habitat. No analysis of the impacts to federally designated critical habitat is provided, nor is mitigation for those impacts identified. In addition, unpermitted illegal "take" is occurring from ongoing activities.

While cause of mortalities can be challenging to determine, in 2019 the CDPR documented five adult snowy plover mortalities in the "open riding" area associated with "multiple tire tracks" (CDPR 2019, Table H.5 at pg. 131). Four of the mortalities occurred in August during the breeding season and one in November when the exclosures were not in place. In 2018, the CDPR documented eight adult snowy plover mortalities in the "open riding" area associated with "multiple tire tracks" and often "flattened" (CDPR 2018, Table H.3 at pg. 134-135). Three mortalities occurred in late September within the breeding season window, and five occurred in the non-breeding season when the exclosures were not in place. In 2017, the CDPR documented nine adult snowy plover mortalities in the "open riding" area associated with "tire tracks" and often "flattened" or noted as a "vehicle strike" (CDPR 2017, Table G.3 at pg. 146-147). Two mortalities occurred in early to mid-September within the breeding season window, and seven occurred in the non-breeding season when the exclosures were not in place. In 2016, the CDPR documented six adult snowy plover mortalities in the "open riding" area associated with "tire tracks" and often "flattened" or noted as a "blunt trauma" or "crushed" (CDPR 2016, Table G.4 at pg. 140). Two mortalities occurred in early to mid-March within the breeding season window, and four occurred in the non-breeding season when the exclosures were not in place. O4-27

In the riding areas, a majority of the adult mortalities occur in the non-breeding season, yet no new AMMs are proposed to avoid or minimize "take" of resident snowy plovers during the non-breeding season. New AMMs need to include permanent exclosures during the non-breeding season to provide safe areas for the resident snowy plovers to forage and loaf. Brindock and Colwell (2011) found clear habitat attributes (abundant food, wide beaches and limited obstructive cover) that supported year-round residents and migrants and calls for "protecting

occupied sites from human disturbance, which adversely alters nonbreeding habitat and directly causes mortality".

O4-27

State Parks has the discretion to use the current environmental setting during the COVID-19 closure as the baseline. Oceano Dunes SVRA has been closed to vehicular traffic since May 1, 2020 and remains closed to date due to the Covid-19 crisis, allowing wildlife to utilize suitable habitat with far less human disturbance. This provides a rare opportunity to evaluate how the covered species under the HCP use the habitat absent impacts from vehicles, including crossing Arroyo Grande Creek, vehicles camping on the beach, and off-road vehicle activity on the beach and in the dunes. Center staff documented some of the current environmental conditions on May 15 and 25, 2020 and the report from those visits we include as an Attachment to these comments. The report documents active use by snowy plovers – both adults and chicks - outside of the exclosure areas between milepost 4 and 6.

O4-28

The report also documents a "hazing" technique using mylar flagging to discourage snowy plovers and other birds from using these areas for nesting. This "hazing" technique is considered "take" under the federal Endangered Species Act, under which "take" of a species includes to "harass, harm, pursue, hunt, shoot, wound kill, trap, capture, or collect, or to attempt to engage in any conduct" (16 U.S.C. § 1532(19), and is therefore currently illegal. In addition, we received from CDPR (n.d.), *Protocols to protect western snowy plover and California least tern during 2020 Oceano Dunes State Vehicular Area park reopening* (attached) that states "Scrapes found are scuffed out and marked with pin flags." (at pg. 1). Because scrapes are excavated by male snowy plovers to attract female mates, "scuffing" out these structures interferes with mating activities and is a form of harassment and "take" under the ESA. Only AMM 40 addresses hazing and it only addresses hazing of predators, not listed species. If CDPR anticipates that hazing techniques would continue to be used on listed proposed covered species, "take" coverage needs to be sought by including all "hazing" activities as covered activities under the HCP. This issue must be addressed in a revised Draft HCP, and because it is not addressed in the DEIR it is inadequate.

O4-29

**B. Project description is unclear, unstable and segmented**

State Parks has indicated that in addition to the activities it seeks authorization for under the HCP now, it may propose activities contemplated in the Public Works Plan (PWP) which is currently undergoing public input. The HCP (at 2-41 to 2-42) identifies that "CDPR is currently evaluating including the following projects in the PWP:

- Converting all or a portion of the 120-acre agricultural lease area near Oso Flaco to a campground and/or day use area
- Developing public motorized and/or non-motorized access into the southern area of the SVRA via the new campground and/or day use site
- Facility improvements at the parks' corporation yard
- Oceano Campground infrastructure improvements

O4-30

- North Beach Campground facility improvements
- Changes at the Grand Avenue and Pier Avenue entrance areas, including lifeguard tower and kiosk improvements and assessing changes to use of those entrances
- Adding visitor-serving amenities at the butterfly grove
- Developing an accessible public access boardwalk along the foredunes between Grand and Pier avenues
- Operational changes that could alter the areas that are open to OHV recreation within the covered areas.
- Riding in 40 Acres

The "Riding in 40 acres" is already included as a covered activity in the HCP, but the remaining PWP projects that would result in "take" of species covered under the HCP are contemplated to require amending into the HCP in the future. The HCP (at pg. 2-42) states: O4-30

> As individual PWP projects are brought forward for implementation, they will be assessed for incorporation into the HCP via amendment. Some of the smaller PWP projects could possibly be incorporated into the HCP as special projects (CA-49; section 2.2.5.9) and not require an amendment.

This approach would unlawfully segment the CEQA review of the HCP project as a whole. State Parks must address all impacts of the proposed project now, including aspects of the proposed PWP that affect covered species, it cannot segment that review.

**C. Draft EIR does not adequately consider protection of coastal resources**

*1. Coastal Resources*

The coastal strand ecosystem is unique and fragile. Much of this ecosystem in central and southern California has been significantly altered by development, converted to accommodate recreational uses and invaded by non-native plants.

The ecosystem is characterized by strong desiccating winds, fog, salt spray, intense solar radiation, a relatively infertile and unstable substrate (sand) and typically droughty conditions. This ecosystem extends from the high tide zone inward in a narrow band and gives way to dune ecosystems that share many of the intense weather features. Many of the plants in these ecosystems have adapted to shifting sands, with stems that lay prostrate over the sand, or leaves that curve downward and lay flat along the sand. Some leaves have sticky or hairy surfaces, which gather sand grains to act as ballast, holding them down during high winds. Many of these plants reproduce and spread by rhizomes. Salt spray, slow nutrient cycling and drying winds contribute to a desert-like environment despite being directly adjacent to the Pacific Ocean. O4-31

While the HCP considers the 40-acre riding area as a covered activity where it states "Riding in 40 Acres is already included as a covered activity (CA-42; section 2.2.5.2) (at pg. 2-42), the DEIR identifies the 40-acre riding area as a "Potential Future Covered Activity (DEIR at Figure 5-5). Not only does the 40-acre riding area cover part of the current Boneyard Exclosure area, it is also directly adjacent to Oso Flaco Lake. No analysis of impacts of this activity is provided although the whole area is within ESHA, and much of it is within designated critical habitat for the La Graciosa thistle and the current seasonal protections of the Boneyard Exclosure. In addition the impact analysis must also include direct and indirect impacts to tidewater goby critical habitat at Oso Flaco Lake. The DEIR must analyze the impacts of all covered activities. O4-31

*2. Wetlands*

Wetlands are rare and unique features that provide habitat for some of the proposed covered species, including the California red-legged frog, tidewater goby, and some of the rare plants, among other rare species. As part of the current activities, CDPR and the SVRA utilize numerous pesticides and herbicides primarily in order to control invasive species. Some of the products are toxic to covered species as well as non-covered but sensitive species and/or their pollinators. For this reason, the DEIR needs to clearly put in place pesticide use mitigation measures which safeguard the non-target plants and animals that are covered species or other rare species and pollinators, for the following proposed pesticide uses:

**Aminocyclopyrachlor**

Aminocyclopyrachlor (ACP) is extremely harmful to plants, particularly dicots. EPA found that if used according to the label, nearby, non-target plants could be exposed to as much as 18,000 times the level of ACP known to cause harm.[1] The EPA's risk level of concern (a comparison of the estimated exposure concentration and the concentration known to cause harm) was exceeded by 3,600 and 18,200 for ESA-listed dicot plants for ground and aerial non-crop applications, respectively, and by 37 and 189 for non-listed dicot plants for ground and aerial non-crop applications, respectively.[2] And that is just when measuring how *spray drift only* will affect the vegetative vigor of plants. When modelling how the combination of spray drift and runoff could impact seedling emergence, EPA found that both listed and non-listed dicots could be exposed to nearly 300 times the concentration known to cause harm.[3] O4-32

Harm to listed and non-listed dicot plants from ACP spray drift was found to occur at distances greater than 1,000 feet from ground applications – even when modelled at a reduced application

1 EPA. Memorandum. Transmittal Memo regarding the "Ecological Risk Assessment for the Section 3
New Chemical Registration of Aminocyclopyrachlor on Non-crop Areas and Turf." January 22, 2010. Pgs 50-51. Available here: https://www.regulations.gov/document?D=EPA-HQ-OPP-2009-0789-0004.
2 *Id.*
3 *Id.*

rate – and greater than 2,600 feet from aerial applications.[4] As such, the EPA has stated that the use of ACP may affect any ESA-listed species of plant and animal if its use overlaps with a species' range.[5]

This estimated harm from the EPA-approved, labelled uses of ACP is significant and clearly explains why there have been many extremely adverse incidents associated with its use. When ACP first came on the market ten years ago, its maker was besieged by at least 30,000 claims from homeowners, golf courses, municipalities and landscapers that the herbicide damaged non-target trees.[6] It is estimated that hundreds of thousands of trees were killed or damaged by ACP in the first two years of its use.[7] More recently in Oregon, all formulations containing ACP are now highly restricted in the state following years of damage to 2,000 ponderosa pines in the state.[8] Environmental sampling found the presence of ACP in dead and dying trees 6 years since the last nearby application was made.[9] An investigation by the Oregon Department of Agriculture found that all ACP applications were made according to the EPA-approved label.[10] In addition to harm to trees and other plants, EPA also found significant weight reduction in birds exposed to ACP for short periods of time and the agency did not have enough data to sufficiently analyze chronic risk to birds from ACP exposure. Therefore, birds appear to be at risk of acute harm due to ACP exposure and there is not enough information to indicate that chronic, long-term exposures are safe.

O4-32

**Clethodim**

Clethodim poses a risk to many non-target organisms, including freshwater fish and amphibians, for every single approved use of the pesticide.[11] Mammals are also estimated to experience chronic

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4 *Ig.* at 53-54.
5 *Id.* at 57.
6 Robbins, J. DuPont Facing 30,000 Claims for Tree Deaths. New York Times. June 22, 2012. Available here: https://green.blogs.nytimes.com/2012/06/22/dupont-facing-30000-claims-for-tree-deaths/.
7 *Id.*
8 Cureton, E. Oregon Becomes 1st State To Sharply Restrict Herbicide Linked To Tree Deaths. Oregon Public Broadcasting. May 10, 2019. Available here: https://www.opb.org/news/article/oregon-herbicide-restriction-aminocyclopyrachlor-perspective-acp-sisters/.
9 Oregon Department of Agriculture. Natural Resources Pesticides Program. Notice Of Proposed Rulemaking Filing Including Statement Of Need & Fiscal Impact. Available here: https://www.oregon.gov/ODA/programs/Pesticides/RegulatoryIssues/Documents/Documents/2019/ACPRuleJustification.pdf.
10 *Id.*
11 EPA. Clethodim: Preliminary Ecological Risk Assessment for Registration Review. January 13, 2014. Pgs 51-52. Available here: https://www.regulations.gov/document?D=EPA-HQ-OPP-2008-0658-0020.

harms from many uses of clethodim.[12] Terrestrial plants, particularly monocots are expected to experience reduced seedling emergence more than 1,000 ft away from the treated area and experience growth impairment nearly 500 ft from the treated area.[13]

**Glyphosate**

A recent EPA analysis found multiple environmental harms from glyphosate use. Use of glyphosate in accordance with the label was found to:

1) Result in concentrations that can potentially impact the survival and biomass of aquatic plants, upland plants, and riparian/wetland plants.[14]
2) Result in residues on foliage that can potentially impact the growth of herbivorous birds, reptiles and terrestrial amphibians.[15]
3) Potentially impact the growth and reproduction of terrestrial mammals following ground applications of glyphosate.[16]

O4-32

This analysis also indicated that considerable no-spray buffers would be needed to keep off-target plants from being harmed by glyphosate use, more than 1,000 feet for certain aerial applications and nearly 400 feet for certain ground applications.[17] The states of California and Arkansas both have mandatory no-spray buffers of 500 feet for aerial applications.[18] Ecological incident data also reinforce the finding that the current labelled uses of glyphosate are having devastating effects to plant and animal life outside of the sprayed field.[19] Approximately 600 incidents have been reported and logged on the Ecological Incident Information System (EIIS) and Avian Monitoring Information System (AIMS) databases. A separate Incident Data System (IDS) database has identified 269 separate aggregate incident reports. Ecological incidents are also significantly underreported for pesticides so this should be viewed as the absolute bare minimum of ecological incidents that involve glyphosate.

The EPA has found that glyphosate poses a risk to a federally listed amphibian, the California red-legged frog, making a Likely to Adversely Affect determination for the species.[20] Some

12 *Id.* at 59.
13 *Id.* at 61.
14 EPA. Preliminary Ecological Risk Assessment for Glyphosate and Its Salts. Sept. 8, 2015 page 2. Available here: https://www.regulations.gov/document?D=EPA-HQ-OPP-2009-0361-0077.
15 *Id.*
16 *Id.*
17 *Id.* page 92.
18 EPA. Drinking Water Assessment for the Registration Review of Glyphosate. June 15, 2017. Pg. 16.
19 EPA. Preliminary Ecological Risk Assessment for Glyphosate and Its Salts. Sept. 8, 2015. Pgs 59-62. Available here: https://www.regulations.gov/document?D=EPA-HQ-OPP-2009-0361-0077.
20 EPA. Risks of Glyphosate Use to Federally Threatened California Red-legged Frog (Rana

glyphosate formulations and co-formulants have been found to be "highly toxic" to certain species of fish.[21]

Researchers have found negative associations between glyphosate use and monarch butterfly population size.[22] Use of glyphosate has been tied to widespread declines of milkweed, which is essential to monarch butterfly survival.[23]

The World Health Organization's International Agency for Research on Cancer ("IARC") conducted an exhaustive review of the publicly available scientific literature in 2015 and concluded that glyphosate is "probably carcinogenic to humans" (Group 2A).[24] IARC carefully weighed evidence in three areas, and found that: 1) There was sufficient evidence to conclude that glyphosate causes cancer in animal studies; 2) There was limited evidence that exposure to glyphosate causes cancer (non-Hodgkin lymphoma) in humans; and 3) There was strong evidence that glyphosate can damage DNA and induce oxidative stress,[25] two well characterized pathways that can lead to cancer.[26]

O4-32

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aurora draytonii). Pesticide Effects Determination. October 17, 2008. Available here: https://www3.epa.gov/pesticides/endanger/litstatus/effects/redleg-frog/glyphosate/determination.pdf.

21 *Id.* at 82, 84.

22 Semmens, B. X., D. J. Semmens, W. E. Thogmartin, R. Wiederholt, L. Lopez-Hoffman, J. E. Diffendorfer, J. M. Pleasants, K. S. Oberhauser and O. R. Taylor (2016). "Quasi-extinction risk and population targets for the Eastern, migratory population of monarch butterflies (Danaus plexippus)." Sci Rep 6: 23265.

23 Center for Biological Diversity, Petition to Protect the Monarch Butterfly (*Danaus Plexippus Plexippus*) Under the Endangered Species Act, 7 (2014), available at http://www.biologicaldiversity.org/species/invertebrates/pdfs/Monarch_ESA_Petition.pdf ("A primary threat to the monarch is the drastic loss of milkweed caused by increased and later season use of the herbicide glyphosate in conjunction with widespread planting of genetically engineered, herbicide-resistant corn and soybeans in the Corn Belt region of the United States and to planting of genetically-engineered cotton in California. In the Midwest, nearly ubiquitous adoption of, glyphosate-resistant 'Roundup Ready' corn and soybeans has caused a precipitous decline of common milkweed, and thus of monarchs, which lay their eggs only on milkweeds. The majority of the world's monarchs originate in the Corn Belt region of the United States where milkweed loss has been severe, and the threat that this habitat loss poses to the resiliency, redundancy, and representation of the monarch cannot be overstated.").

24 WHO. IARC Monographs on the Evaluation of Carcinogenic Risks to Humans. Volume 112: Some Organophosphate Insecticides and Herbicides. Glyphosate. 2017. Available at: http://monographs.iarc.fr/ENG/Monographs/vol112/mono112.pdf

25 *Id.*

26 Klaunig, J.E., et al., The role of oxidative stress in chemical carcinogenesis. Environ Health Perspect, 1998. 106 Suppl 1: p. 289-95; and Lee, S.J., et al., Distinguishing between genotoxic and non-genotoxic hepatocarcinogens by gene expression profiling and bioinformatic pathway analysis. Sci Rep, 2013. 3: p. 2783.

IARC's finding that glyphosate causes cancer in animals prompted California's Office of Environmental Health Hazard Assessment to list glyphosate as a known carcinogen under California's Proposition 65 law.[27] The agency has also finalized a No Significant Risk Level for glyphosate, which estimated the daily exposure level that will result in a 1/100,000 chance of developing cancer, of 1.1 mg/day.[28]

**Triclopyr**

EPA has found that range, pastureland, and rights-of-way uses of triclopyr can expose birds, reptiles and terrestrial amphibians to levels of the herbicide that cause reduced survival of offspring.[29] The same uses can expose mammals to 37 times the amount of triclopyr known to reduced litter size.[30] All labelled uses of triclopyr were found to expose adult and larval bees to levels estimated to reduce survival and larval emergence.[31] Harm to bee larva was estimated more than 1,000 feet from the application site.[32] Terrestrial plants were also estimated to be exposed to levels of triclopyr that were known to cause harm more than 1,000 feet away from the site of application, even for ground applications.[33]

O4-32

Triclopyr butoxyethyl ester (BEE) is classified as "highly toxic" to aquatic organisms. Range, pastureland and meadow uses of BEE can expose fish and aquatic invertebrates to levels of the pesticide known to cause acute harm.[34] The EPA has found that triclopyr poses a risk to a federally listed amphibian, the California red-legged frog, making a Likely to Adversely Affect determination for the species.[35]

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27 OEHHA. The California Environmental Protection Agency's Office of Environmental Health Hazard Assessment. Glyphosate Listed Effective July 7, 2017, as Known to the State of California to Cause Cancer. Available at: https://oehha.ca.gov/proposition-65/crnr/glyphosate-listed-effective-july-7-2017-known-state-california-cause-cancer.

28 OEHHA. The California Environmental Protection Agency's Office of Environmental Health Hazard Assessment. Amendment to Section 25705 No Significant Risk Level - Glyphosate April 10, 2018. Available at: https://oehha.ca.gov/proposition-65/crnr/amendment-section-25705-no-significant-risk-level-glyphosate-april-10-2018.

29 EPA. Triclopyr (Acid, Choline salt, TEA salt, BEE): Draft Ecological Risk Assessment for Registration Review. Sept. 30, 2029. Pg. 6. Available here: https://www.regulations.gov/document?D=EPA-HQ-OPP-2014-0576-0026.

30 *Id.* at 8.

31 *Id.* at 9.

32 *Id.* at 90.

33 *Id.* at 94-95.

34 *Id.* at 9.

35 EPA. Risks of Triclopyr Use to Federally Threatened California Red-legged Frog (Rana aurora draytonii) Pesticide Effects Determination. October 19, 2009. Available here: https://www3.epa.gov/pesticides/endanger/litstatus/effects/redleg-frog/triclopyr/analysis.pdf.

**Fluazifop-P-Butyl**

One other pesticide, Fluazifop-P-Butyl, not used in wetlands, according to the pesticide label, can expose mammals to concentrations that are known to cause reduced pup viability and pup weight.[36] Fluazifop can also cause chronic harm to bee larva following every use of the pesticide that was modelled by EPA.[37] Terrestrial plants can be exposed to levels of fluazifop via spray drift that can cause harm, anywhere from 100 to 1,000 ft from the treated area.[38] We urge the CDPR to safeguard the resources of the park from the use of this pesticide. O4-32

*3. ESHA*

All of Oceano Dunes SVRA is defined as an Environmentally Sensitive Habitat Area (ESHA) by the Coastal Commission and ESHA must be protected. (Pub. Res. Code § 30240; *Bolsa Chica Land Trust v. Superior Court* (1999) 71 Cal. App. 4th 493, 507-508.) As the California Supreme Court recently explained:

> ESHA, however, are "rare or especially valuable" habitat areas in the coastal zone, given enhanced protection by the Coastal Act. ([Pub. Res. Code § 30107.5.) They must be "protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas." ([*Id.*] § 30240, subd. (a).)

(*Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal. 2 Cal. 5th 918, 936.) The Supreme Court held that the City's CEQA review in that case "fell short by failing to account for the Coastal Act's ESHA protections" and "also ignored the practical reality that the project must ultimately pass muster under the Coastal Act." (*Id.* at 941-42.) O4-33

State Parks' Draft EIR falls short in its evaluation of ESHA—trying to devalue the current habitat in an attempt to ignore impacts to this critical resource. For example, regarding the new proposal for mechanical trash removal the DEIR states:

> General Facilities Maintenance – Mechanical Trash Removal (CA-21). Mechanical trash removal is proposed to occur within unvegetated areas along the shoreline and margin of the foredunes, above the wrack line (i.e., outside of the intertidal zone). Mechanical trash removal would also avoid all live vegetation and aquatic areas. As a result, mechanical trash removal is only expected to impact bare, open sand areas. However, mechanical trash removal may occur within SNPL critical habitat (as described above in EIR section 6.3.2.1) and La Graciosa thistle critical habitat as well as ESHA defined by the CCC. Critical habitat and ESHA are considered to be sensitive habitat. Mechanical trash

36 EPA. Fluazifop-p-butyl: Draft Ecological Risk Assessment for Registration Review. June 27, 2019. Pg. 61. Available here: https://www.regulations.gov/document?D=EPA-HQ-OPP-2014-0779-0017.
37 *Id.* at 64-65.
38 *Id*. at 67.

> removal could temporarily remove favorable constituents within SNPL and La Graciosa thistle critical habitat as well as ESHA by altering dune composition and topography. Specifically, mechanical trash removal could reduce organic surface materials (e.g., driftwood) and microtopography. Most mechanical trash removal would be conducted to remove litter in areas where recreation activities have been concentrated. These areas have always supported an ongoing high level of recreation (i.e., presence of humans, pets, vehicles, and/or human attracted predators) [FN omitted] and, therefore, critical habitat and ESHA in this area has a reduced value. In addition, mechanical trash removal may improve the habitat by removing trash from the area. As a result, impacts to sensitive natural communities would be *less than significant*.

DEIR at 6-109

The DEIR's impact analysis is fatally flawed for several reasons. First, the DEIR relies on an artificial time frame to conclude that "these areas have always supported an ongoing high level of recreation and therefore, critical habitat and ESHA in this area has a reduced value." Actually, these areas have not always supported high levels of recreation. The first General Development Plan that included Oceano Dunes SVRA was approved in 1975 and codified the casual recreation use that had been occurring up to that time. While the DEIR states that 2 million people visit the SVRA annually (at pg. 2-4), we were unable to find substantiating data or information that supports the statement that the areas have *always* supported high levels of recreation in the SVRA over time in either the DEIR or the HCP, although it is likely it has increased over time. One alternative that CDPR needs to consider in the DEIR and HCP is decreasing the annual visitation in order to decrease the level of recreation that reduces the value of critical habitat and ESHA. O4-33

Upon listing and establishment of critical habitat for the Western snowy plover – Pacific DPS, the USFWS recognized the importance of the coastal strand area within the boundaries of the Oceano Dunes SVRA in sustaining and recovering the species. The DEIR recognizes "Critical habitat may also include an area that is not currently occupied by the species but that will be needed for its recovery." (at pg. 6-35). While many of the current avoidance and minimization measures aim at protecting the snowy plover (and California least tern), neither the DEIR or HCP analyze State Park's ongoing impacts from current activities, much less proposed and future activities, to federally designated critical habitat. It also does not analyze impacts to ESHA from current activities. Absent the impact analysis, the DEIR fails to provide mitigation for impacts to critical habitat or ESHA.

4. Trash/Beach Grooming

Because trash is an ongoing problem that attracts and subsidizes predators which can increase predation pressures on sensitive species covered under the HCP, the DEIR needs to identify and analyze a suite of trash reduction initiatives, including proactive education O4-34

and penalizing actions for improper trash storage and dumping. Handing out trash bags and providing dumpsters has not been successful to date to prevent trash impacts. During prior visits to the SVRA, we noted that the dumpsters provided for trash disposal were uncovered and trash was blowing out of them and getting partially caught in the surrounding fencing. A full "Trash Free Beach" Initiative should be analyzed and implemented in order to increase the health and aesthetics of the beach and decrease impacts to the covered species and ESHA, instead of mechanical trash removal.

As the DEIR notes (at pg. 5-22) beach grooming is well documented to destroy the coastal strand habitat. Dugan and Hubbard (2010) found the following:

> unvegetated dry sand zones were four times wider, macrophyte wrack cover was >9 times lower, and native plant abundance and richness were 15 and >3 times lower, respectively, compared to ungroomed beaches. Experimental comparisons of native plant performance were consistent with our survey results: On groomed beaches, although initial germination was similar, seed bank, survival, and reproduction were significantly lower in groomed compared to ungroomed plots.

The DEIR tries to justify the additional impact of beach grooming (mechanical trash removal) as not significant because the grooming would only occur in areas already heavily impacted by vehicles and maintenance activities. Federally designated critical habitat for snowy plovers also occurs within the areas proposed for grooming, yet the impact to critical habitat is not analyzed in the DEIR.

O4-34

Dugan and Hubbard (2010) found that beach grooming will further exacerbate the conversion of coastal strand habitat to readily emissive sand:

> "Rates of aeolian sand transport were significantly higher in groomed plots, while native plants or wrack placed in that zone reduced sand transport. Our results suggest beach grooming has contributed to widespread conversion of coastal strand ecosystems to unvegetated sand."

Because the SVRA is already out of compliance with air quality standards and burdening the adjacent communities with hazardous air quality due to blowing sand, State Parks seems negligent at best to propose additional disturbance that will exacerbate air pollution. The State Park's own studies documented that "approximately 22 percent of the material collected was trash (e.g., paper, plastic debris, glass, etc.) and the remaining 78 percent of the material was organic (e.g., wood and charcoal) or rock (DEIR at pg. 5-22). The analysis concludes that "removal of such items from the surface of the sand at Oceano Dunes SVRA could, in turn, increase emissivity in portions of the SVRA that have been raked" (Ibid). While the DEIR tries to downplay the increased emissivity by stating that the emissivity would not occur "at the same rates observed by Dugan and Hubbard, since conditions at Oceano Dunes SVRA are regularly disturbed, free of vegetation, and not seeded to artificially high vegetation rates" (Ibid), it fails to provide data on the actual anticipated increase in emissivity from the proposed action. The proposed action also does not align with State Park's

Beach Grooming Policy (0311.4.2.1), which requires "limit[ing] the amount or type of grooming used to that necessary for public health and safety, while allowing natural physical and biological uses of beach wrack to continue.(DEIR at pg. 4-4). Based on that Policy, no beach grooming should be proposed in order to protect public health, which is already suffering air pollution from current existing activities on the SVRA. O4-34

**D. DEIR and HCP Fail to Justify Exclosure 6 or Boneyard Reductions or Adequately Mitigate Impacts**

The DEIR fails to adequately justify the proposal to reduce the existing breeding exclosures for snowy plovers and California least terns, including Exclosure 6 and over half of the Boneyard exclosure. For snowy plovers, the HCP identifies CDPR's management target of 155 breeding adults averaged over a moving three-year period (HCP at 5-2). The 155 breeding adults represents 44% of the 350 breeding adults identified for the Pismo Beach/Nipomo Dunes complex (CA-83) Recovery Goal in USFWS' Recovery Plan (2007). CA-83 is part of the larger Recovery Unit 5 that include San Luis Obispo, Santa Barbara and Ventura Counties. Unfortunately, Recovery Unit 5 is still not reaching the USFWS' recovery goal of 1,200 breeding pairs. In 2019, Recovery Unit 5 declined to only 807 breeding pairs – the lowest number of breeding pairs in the last six years (USFWS 2019). Because the HCP area is one of the largest breeding population sites within Recovery Unit 5, it is biologically indefensible to reduce conservation through reductions in breeding exclosures when the listed population and the Recovery Unit are falling well short of recovery goals and over the short term appear to be in decline.

The DEIR proposes reductions to the protective breeding exclosures as follows: O4-35

> <u>Reduction of the Boneyard Exclosure and 6 Exclosure (CA-50).</u> The East Boneyard Exclosure and 6 Exclosure reduction would open new areas to motorized vehicle and pedestrian recreation during the SNPL and CLTE breeding season. Most of these areas consist of bare sand and any exposed native vegetation would continue to be protected with fencing. The East Boneyard Exclosure and 6 Exclosure are removed during the winter each year and open to motorized recreation where visitors can drive through ESHA, SNPL critical habitat, and La Graciosa thistle critical habitat. Therefore, no changes to the existing impacts on sensitive natural communities would be expected and impacts would be *less than significant.*

DEIR at 6-109 to 110

Map 11a documents that Breeding Exclosure 6 is a highly utilized breeding area for snowy plovers, perhaps the most used area within the HCP area. Map 13a documents that Breeding Exclosure 6 is also a highly utilized breeding area for California least terns. The HCP and DEIR fail to provide justification or analysis as to why the highly desirable

and successful Breeding Exclosure 6 would be preferentially chosen to be reduced. Neither the HCP or the EIR analyze the need to open new areas to motorized vehicles and pedestrian recreation during the threatened and endangered birds' breeding season, much less why Breeding Exclosure 6 is the preferred area to be reduced. The documents also fail to address any mitigation to offset the reduction in protected breeding habitat, or to mitigate impacts to ESHA and federally designated critical habitats.

The HCP describes the Boneyard exclosure reduction as follows: "the OHMVR Division proposes to no longer fence off the East Boneyard Exclosure (approximately 47 to 49 acres depending on dune topography) starting with the first breeding season under the HCP." The HCP never clearly states why this area is needed for "additional opportunity for year-round recreation". The proposed 40-acre riding area (which may or may not be a covered activity under the HCP – see discussion above) overlays part of the current Boneyard exclosure and critical habitat for La Graciosa thistle. The elimination of part of the Boneyard exclosure appears to be based solely on the fact that no California least terns have nested there since 2005 and only seven snowy plover nests have been established there during monitoring. Yet, the purpose and need for the 40-acre riding area are not identified and the 40-acre riding area is not analyzed for impacts in the DEIR, including impacts to La Graciosa thistle critical habitat. The 40-acre riding area is also directly adjacent to Oso Flaco lake and may directly or indirectly impact the proposed covered species (and other species) that rely on the Oso Flaco lake ecosystem, but the DEIR fails to analyze those potential impacts.

O4-35

> CDPR UAS Use for Park Activities (CA-52). UAS would have *no impact* on sensitive natural communities.

O4-36

Draft EIR at 6-109 to 110. This conclusion is not sufficiently supported in the DEIR.

## II. THE ODD DRAFT HCP FAILS TO MEET THE REQUREMENTS OF OTHER CALIFORNIA LAWS INCLUDING CESA, FULLY PROTECTED SPECIES ACT, COASTAL ACT, AND STATE PARKS' OBLIGATIONS UNDER THE CALIFORNIA PUBLIC TRUST DOCTRINE

### A. CESA requirements for seven listed species are not met

The HCP does not propose applying for take authorization under CESA for the seven state listed species including:

- California least tern (*Sternula antillarum browni*) – Endangered and also Fully Protected (see below)
- Marsh sandwort (*Arenaria paludicola*) – Endangered
- La Graciosa thistle (*Cirsium scariosum* var. *loncholepis*) – Threatened
- Surf thistle (*Cirsium rhothophilum*) – Threatened
- Beach spectaclepod (*Dithyrea maritima*) – Threatened
- Nipomo Mesa lupine (*Lupinus nipomensis*) - Endangered

O4-37

- Gambel's watercress (*Nasturtium* [*Rorippa*] *gambelii*) – Threatened

Recreational activities, including motorized vehicles, have the potential to impact some of these species, but the DEIR fails to provide a comprehensive analysis of impact from current ongoing activities. Therefore it fails to propose measures to minimize and fully mitigate the impacts of the proposed taking; propose a plan to monitor compliance with minimization and mitigation measures and the effectiveness of the measures; or describe the funding source and the level of funding available for implementation of the minimization and mitigation measures, as required by CESA for an Incidental Take Permit (ITP). O4-37

**B. The Draft HCP would allow take of Fully Protected Species without a NCCP in violation of law.**

The California least tern is a fully protected species under California law (Fish & Game Code § 3511(b)(6)), and therefore any take of this species is unlawful under the fully protected statute except, as relevant here, as part of a Natural Communities Conservation Plan (NCCP) as provided by Fish & Game Code § 2835, or through avoidance of all potential impacts. The Draft HCP indicates State Parks intends to prepare an NCCP at a later time but the NCCP and HCP process should be coordinated and evaluated in a single DEIR. Moreover, unless State Parks ensures complete avoidance of impacts to least tern until the NCCP is adopted, State Parks will remain in violation of the law. O4-38

**C. Fails to meet requirements of the existing LCP and statutory requirements to protect coastal resources**

The activities authorized under the Draft HCP do not comply with statutory requirements to protect coastal resources, the existing LCP, or the direction that Coastal Commission has provided for needed improvements in management. Whether State Parks ultimately addresses these issues through a new LCP or their proposed Public Works Plan (PWP), the resulting plan in concert with any HCP adopted by State Parks must be consistent with these statutory directives.

As noted above, all of Oceano Dunes SVRA is defined as an Environmentally Sensitive Habitat Area (ESHA) by the Coastal Commission. ESHA must be protected. (Pub. Res. Code § 30240; *Bolsa Chica Land Trust v. Superior Court* (1999) 71 Cal. App. 4th 493, 507-508.) As the California Supreme Court recently explained: O4-39

> ESHA, however, are "rare or especially valuable" habitat areas in the coastal zone, given enhanced protection by the Coastal Act. ([Pub. Res. Code § 30107.5.) They must be "protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas." ([*Id.*] § 30240, subd. (a).)

(*Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal. 2 Cal. 5th 918, 936; emphasis added].)

CDPR has a decades long history of non-compliance with San Luis Obispo County's Local Coastal Program and the Coastal Development Permit ("CDP") for ODSVRA. The 1982 CDP which the California Coastal Commission ("CCC") issued for ODSVRA was purposefully only authorized temporarily and on an interim basis. Yet 27 years later, a June 2019 CCC Summary of Staff Recommendation regarding the LCP review noted that CDPR has never fulfilled the requirements of the CDP, nor does it operate in compliance with the Coastal Act.

The June 2019 CCC Staff Recommendation concluded that " ... it is time to start thinking about ways to transition the park away from high-intensity OHV use to other less intensive forms of public access and recreation."

CCC staff recommended and in July 2019 the CCC directed the CDPR to implement 15 "short-term/interim solutions" to address the ongoing CDP violations and begin to come into compliance with the Coastal Act. The CCC directed CDPR to incorporate these 15 management measures into the Public Works Plan which CDPR is preparing to supplant the CDP, and to make them permanent conditions within the PWP process.

The 15 management measures include requirements which would increase protection and reduce take of snowy plovers and least terns:

- Increase predator management, including controlling trash and food waste;
- Increase enforcement of vehicular use limits and speed limits;
- Additional fencing to better protect coastal resources;
- A separate CDP for special events which could adversely impact coastal resources;
- Prohibit night riding;
- Prohibit vehicle crossing of Arroyo Grande Creek;
- Reduce OHV use limits;
- Eliminate exceptions to OHV use limits; and
- Make the endangered species exclosure areas permanent

O4-39

The CCC clarified the Commission's directives in a July 12, 2019 letter and gave CDPR until summer of 2020 to prepare a sufficient PWP which incorporates these 15 measures and complies with the Local Coastal Program.

On July 23, 2019 the CCC sent a letter to CDPR confirming that the Coastal Commission "concluded and decided that ODSVRA cannot continue to operate as it has while complying with the base CDP, the Coastal Act, and the LCP, and that it is time to explore alternatives to transition ODSVRA away from high-intensity off-highway vehicle (OHV) use to other forms of public access and recreation in order to meet Coastal Act requirements."

The July 23, 2019 CCC letter called out ongoing rare and endangered species and habitat issues at ODSVRA:

> "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 exclosure 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."

The July 23, 2019 CCC letter also called out issues with the PWP and further noncompliance problems posed by proposed PWP projects:

> "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.

O4-39

The CCC felt compelled to send another letter to CDRP on August 5, 2019 reiterating the need for "State Parks to take seriously both the Commission's articulated direction in the Commission's letter and the staff report-recommended changes, and to ensure that both of these are reflected in upcoming PWP products and efforts, including ultimately through a PWP submittal for Commission consideration by summer of 2020." And on December 13, 2019 CCC sent a letter noting that the 15 items the Commission required be addressed in the PWP are in fact largely not being addressed and that CDPR "will need to demonstrate to the Commission how these issues are being addressed, including in the upcoming February progress update." The Commission's December 2019 letter also warned that the revised Oso Flaco campground proposal in the PWP is not consistent with San Luis Obispo County LCP, and cannot be approved. The Commission's letter noted that the PWP ignores the Commission's explicit

direction to State Parks to phase out OHV use altogether. State Parks has indicated to the Commission that it does not intend to pursue non-OHV options in the PWP. The Commission's letter explained that such disregard for the Commission's explicit direction will lead to a PWP that cannot be approved by the Commission as consistent with the LCP:

> Continuing OHV use in dune ESHA is inconsistent with both Coastal Act and LCP provisions regarding the protection of sensitive dune habitats, and a PWP that continues long term OHV use cannot be found consistent with the LCP. As the Commission identified in its action, including through the letter that provides the Commission's direction to Parks that is dated July 12, 2019: "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."

As late as January 2020 CDPR continued to assert that the CCC had not given a directive on phasing out OHV use at ODSVRA, sending a letter on January 23, 2020 to the CCC stating the agency's belief that the Commission's directive required them only to address "15 new conditions to the existing [Coastal Development Permit]…in its PWP development process" and that "the explicit direction and action of the Commission did not include phasing out off-highway vehicle use altogether at Oceano Dunes SVR A." O4-39

In the 11 months since the July 2019 CCC meeting, CDPR has continued to deny publicly and in letters to the CCC that the Commission ever directed CDPR to begin moving away from off-road vehicle use at ODSVRA, despite explicit communications from the CCC confirming this directive.

Since 2019 the CDPR has held numerous public meetings and published and disseminated drafts and conceptual documents regarding the PWP. CDPR continues to refuse to incorporate the 15 management measures into the PWP, as directed by the CCC, and the draft PWP has no sign of improving management and operation of ODSVRA to better protect snowy plovers and least terns.

In sum, the proposed activities under the HCP would not comply with the LCP or Coastal Commission direction and therefore should not be adopted. The DEIR fails to address these issues and is inadequate.

### D. The Draft HCP undermines State Parks Public Trust Obligations

State Parks has a public trust obligation to protect waters and wildlife. Pursuant to statute (as well as common law) the waters and wildlife resources of the State of California are held in trust for the people of the State. (Fish & Game Code §711.7(a); *see also* Fish & Game Code § 1801 [it is "the policy of the state to encourage the preservation, conservation, and maintenance of wildlife resources under the jurisdiction and influence of the state"], *Ex Parte Maier* (1894) 103 O4-40

Cal. 476, 483; *People v. Harbor Hut Rest.* (1983) 148 Cal. App. 3d 1151, 1154, *Betchart v. California State Dept. of Fish and Game* (1984) 158 Cal. App. 3d 1104, 1106.)

All state agencies are obliged to protect this public trust and the California Legislature has specifically required all state agencies, including State Parks, to "conserve, protect, restore and enhance" any endangered or threatened species and their habitat when undertaking any state action, such as issuance of a permit or adoption of a plan. (Fish & Game Code §§ 2052, 2055; *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 125.) State Parks, therefore, has an affirmative statutory public trust duty to ensure the conservation, preservation, recovery and enhancement of threatened, endangered, and candidate species and their habitats in developing and adopting an HCP.

The public trust doctrine "places on the state the responsibility to enforce the trust." (*Center for Biological Diversity, et al., v. FPL Group, Inc.* (2008) 166 Cal App. 4th 1349, 1368, 1361 ["[I]t is clear that the public trust doctrine encompasses the protection of undomesticated birds and wildlife. They are natural resources of inestimable value to the community as a whole. Their protection and preservation is a public interest."].) This duty carries with it the "implied power to do everything necessary to the execution and administration of the trust." (*People v. California Fish Co*. (1913) 166 Cal. 576, 597.) The Supreme Court has identified this substantive duty "to protect the people's common heritage," holding that an agency may surrender "that right of protection only in rare cases when the abandonment of that right is consistent with the purposes of the trust." (*Nat'l Audubon Soc'y v. Superior Court* (1983) 33 Cal.3d 419, 441.)

In developing the HCP State Parks must ensure that it is meeting its public trust obligation to use "all necessary methods and procedures" to conserve, protect, restore and enhance listed species and to protect biologically sustainable populations of other species. (Fish & Game Code §§ 2052, 2055, 2061.) O4-40

Further, State Parks' consideration of impacts to public trust wildlife resources in the HCP must be informed by the Department of Fish and Wildlife and the Coastal Commission, which each have special responsibilities as trustees.

For example, as detailed above, the Coastal Commission has stressed that the entire Oceano Dunes SVRA is an Environmentally Sensitive Habitat Area (ESHA) and because OHV use is not resource dependent (meaning it can occur outside of the coastal zone), it can only be authorized if that use is consistent with protection of the ESHA values. And the Commission has specifically addressed the need to end vehicle crossings of Arroyo Grande Creek to protect water and fish resources. State Parks cannot lawfully adopt an HCP that destroys public trust resources in wildlife and water or that violates other California coastal protection laws, including protection of ESHA and other conservation of other coastal values.

The Department of Fish and Wildlife is responsible as the trustee for fish and wildlife resources. (Fish and Game Code § 1802.) As part of the CEQA review process, the Department discharges

its public trust obligations through its role as a CEQA "trustee agency" and/or a "responsible agency" when permits or agreements from the Department are required. During CEQA review, the Department is required to "consult with lead and responsible agencies and shall provide, as available, the requisite biological expertise to review and comment upon environmental documents and impacts arising from project activities, as those terms are used in [CEQA]." (Fish and Game Code § 1802.) In the CEQA process the Department is charged with using its biological expertise to "focus on any shortcomings" in the environmental review. (14 Cal. Code Regs § 780). Thus, pursuant to statute, the Department is obligated to provide its requisite biological expertise to review and comment upon environmental documents and the significance of any impacts to state protected species and other wildlife resources arising from proposed project activities. State Parks must consider and should defer to the Department's expertise regarding impacts to species and trust resources in the draft HCP.

O4-40

## III. THE ODD DRAFT HCP FAILS TO MEET THE REQUIREMENTS OF THE FEDERAL ESA

### A. ESA Background Law

The ESA, by way of its "language, history, and structure . . . indicates beyond doubt that Congress intended endangered species to be afforded the *highest* of priorities," for protection under the law. (*Tennessee Valley Authority v. Hill*, 437 U.S. 153, 174 (1978) [emphasis added].) Thus, the ESA prohibits the "take" of a listed species where "take" of a species is includes to "harass, harm, pursue, hunt, shoot, wound kill, trap, capture, or collect, or to attempt to engage in any conduct." (16 U.S.C. § 1532(19).) The ESA provides exceptions that in narrow circumstances allow for incidental take under Section 7 and Section 10. (16 U.S.C. §§ 1536(a)(2), 1539(a)(1)(B).) As relevant to the proposed HCP here, the ESA Section 10 provides an exception to the take prohibition by allowing the issuance of an incidental take permit ("ITP") for an HCP where "such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity." (16 U.S.C. § 1539(a)(1)(B).) In issuing an HCP, the Service must also comply with Section 7 obligations and undertake formal consultation to ensure that that granting the permit "is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [designated critical] habitat of such species . . . " (16 U.S.C. §§ 1536(a)(2); 50 C.F.R. § 402.14; 50 C.F.C. § 402.02).)

O4-41

In addition to its obligations under the ESA, FWS also must satisfy its obligations under the National Environmental Policy Act ("NEPA") before it may issue an ITP. Because FWS has not yet provided its NEPA document for public review, the Center reserves the right to comment further on NEPA compliance and includes only brief comments on that issue here, including the need for an EIS to be prepared. NEPA requires that all federal agencies carrying out "major Federal actions significantly affecting the quality of the human environment" produce a "detailed statement" that specifies the impact the proposed action will have on the environment, the adverse effects resulting from the proposed action that cannot be avoided, and any alternative actions. 42 U.S.C. § 4332(C)(i–iii).) Under NEPA, the agency must also consider "any

irreversible . . . commitments of resources," such as the loss of a protected species or destruction of critical habitat caused by the proposed action. (*Id.* at § 4332(c)(iv–v).) All Federal agencies must prepare an environmental impact statement, ("EIS") prior to engaging in "major Federal actions" that significantly affect the environment. (42 U.S.C. § 4332(c).) Because the proposed Covered Activities under the HCP would cause significant direct, indirect and cumulative impacts to the environment, the Service must prepare an EIS before granting an ITP for those activities.

Pursuant to the CEQ NEPA regulations, "significantly" is broadly defined such that an EIS is required whenever one of the conditions enumerated in the regulations is met, which include both context and "intensity" factors. (40 CFR §1508.27.) Many of these factors are present in this instance including, but not limited to: effects to wetlands and ecologically critical areas, the presence of significant controversy, uncertain effects, cumulatively significant effects, and adverse effects to listed species. (40 CFR §1508.27 (b)(3),(4)(5)(6) &(9).) Courts have found that where any significance factor is shown, an EIS may be required. For example, O4-41

> Agencies must prepare environmental impact statements whenever a federal action is "controversial," that is, when "substantial questions are raised as to whether a project . . . may cause significant degradation of some human environmental factor," [], or there is "a substantial dispute [about] the size, nature, or effect of the major Federal action." [].

(*National Parks & Conservation Ass'n v. Babbitt,* 241 F.3d 722, 736 (9th Cir. 2001) (internal citations omitted).) Based on these factors, the Service must prepare an EIS for this proposed HCP and ITP.

*1. ESA Section 10*

Section 10 of the ESA (16 U.S.C. § 1539(a)(1)(B)), provides an exception to the take prohibition for issuance of an ITP only where the applicant provides a conservation plan and the Service makes a determination that the "impact which will likely result from such taking" and the "steps the applicant will take to minimize and mitigate such impacts . . . will not appreciably reduce the likelihood of the survival and recovery of the species in the wild." 16 U.S.C. § 1539(a)(2)(A)(i–iv). Before issuing an ITP, FWS must make a finding that the application and conservation plan provide:

(i) the taking will be incidental;
(ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking; O4-42
(iii) the applicant will ensure that adequate funding for the plan will be provided;
(iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
(v) the measures, if any, required under subparagraph (A)(iv) will be met . . . .

(16 U.S.C. § 1539(a)(2)(B).) The term "measures" in subsection (v) refers to "any additional measures the Secretary may require as being necessary or appropriate for the purposes of the plan." (*Id.* at § 1539 (a)(2)(A)(iv).)

Pursuant to the regulations, 50 C.F.R. § 17.22(b)(1), an ITP and corresponding HCP are required by law to include:

> (i) A complete description of the activity sought to be authorized;
> (ii) The common and scientific names of the species sought to be covered by the permit, as well as the number, age, and sex of such species, if known;
> (iii) A conservation plan that specifies:
>
> > (A) The impact that will likely result from such taking;
> > (B) What steps the applicant will take to monitor, minimize, and mitigate such impacts, the funding that will be available to implement such steps, and the procedures to be used to deal with unforeseen circumstances;
> > (C) What alternative actions to such taking the applicant considered and the reasons why such alternatives are not proposed to be utilized; and
> > (D) Such other measures that the Director may require as being necessary or appropriate for purposes of the plan . . . .

After considering the statutory and regulatory elements required for an ITP application and HCP, it is clear that the ODD HCP fails to provide a complete account of the proposed activities, sufficient information related to the number, age, and sex of the listed species to be included in the permit, or how the use of habitat loss as proxy will adequately address impacts to these listed species. The applicant also fails to include sufficient information related to the anticipated take for all listed species under the permit, as well as detailed steps that the applicant will take to monitor, minimize, and mitigate the impacts. There simply is not enough information in the HCP regarding the Covered Activities and where they will occur to satisfy the requirements for an ITP and its corresponding HCP as set forth under Section 10(a)(2)(A) of the ESA and the corresponding regulations. O4-42

An applicant for an ITP and HCP must include a description of the activities that will be covered by the permits. The description of the activities should include those: (1) likely to cause incidental take of a listed species; (2) "reasonably certain" to arise during the existence of the permit; and (3) are within the applicant's control. Whether impacts are reasonably certain to occur is a low bar. The proposed HCP does not fully describe all of the activities that will be covered by the ITP or specify where such activities will occur. Instead, large discretion is left to the applicant to determine what activities will be included among the range of operations and maintenance activities it undertakes as well as "minor new construction" projects. The applicant has not provided sufficient detailed information to determine what activities the permits will cover, or the likely impacts to all listed species in the Plan Area including the number of individuals of each listed species that will be impacted.

*2. ESA Section 7*

Prior to granting an ITP application, FWS must also undergo the consultation process with itself, as outlined in Section 7 of the ESA, to assure that granting the permit "is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species." (*16 U.S.C.* § 1536(a)(2).)
As the Ninth Circuit has explained, the inclusion of both survival and recovery in this definition requires consideration of recovery, and is not reasonably susceptible to a "survival only" interpretation. (*NWF v. NMFS*, 524 F.3d 917, 932 (9th Cir. 2007); *Gifford Pinchot Task Force v. United States Fish & Wildlife Service*, 378 F.3d 1059, 1070 (9th Cir. 2004).) A no jeopardy determination is arbitrary and capricious when the agency fails to articulate a rational connection between the facts found and the no jeopardy conclusion. (*Wild Fish Conservancy v. Salazar*, 628 F.3d 513, 516 (9th Cir. 2010).) The burden of proof is on the agency to show that an action will not harm the protected species.

When engaging in Section 7 consultation to determine whether the approval of an ITP will cause jeopardy, FWS is required to render its decision by evaluating the "best scientific and commercial data available." (16 U.S.C. § 1536(a)(2).) If FWS determines the project is unlikely to cause jeopardy to the species or adverse modification of its habitat, the agency must: provide a statement specifying the impact of the incidental take on the listed species, outlining "reasonable and prudent measures" to minimize the impact from incidental take, and setting forth any conditions the agency and applicant must follow in accordance with the ITP. (16 U.S.C. § 1536(b)(4)(A–C).)

When FWS undergoes formal consultation, it shall provide information related to: 1) the action to be considered; 2) the specific area that will be affected by the action; 3) a description of the threatened and endangered species and/or critical habitat that may be affected by the action; 4) a description of the effects the action may have on the listed species, critical habitat, and an analysis of any cumulative effects; 5) relevant reports including biological assessments and/or environmental impact statements that have been prepared related to the action; and 6) any relevant information related to the listed species, critical habitat, and proposed action. (*Id.* § 402.14(c)(1–6).) When considering the adverse effects, FWS must also quantify the amount of take and habitat loss that it has authorized to date and analyze the impact of those authorizations on the survival and recovery of the species. (*Id.* § 402.14.)

An Incidental Take Statement ("ITS") must set forth a trigger that, when reached, results in an unacceptable level of incidental take, requiring the parties to re-initiate consultation. (*Ariz. Cattle Growers' Ass'n v. U.S. Fish & Wildlife*, 273 F.3d 1229, 1249 (9th Cir. 2001).) Preferably, the trigger is numerical, but the Service may use a surrogate - for example, changes in ecological conditions affecting the species. (*Id*. at 1250.) If a surrogate is used, the agency must articulate a rational connection between the surrogate and the taking of the species. (*Id*. at 1250-51.) The

Ninth Circuit has rejected a surrogate trigger so vague that it failed to "provide a clear standard for determining when the authorized level of take has been exceeded," (*id*. at 1251,) and a surrogate so broad – "all spotted owls" associated with the project -- that it "could not adequately trigger reinitiation of consultation." (*Or. Natural Res. Council v. Allen*, 476 F.3d 1031, 1038 (9th Cir. 2007). For the ODD HCP the Service appears to be relying on approximations of habitat acres for a truncated set of listed species that will be affected as a proxy for the take from the Covered Activities, which is inadequate. The Service has failed to justify the need to utilize habitat rather than a numeric value for the permitted take or to show that the surrogate used will provide the needed trigger for reinitiation of consultation.

The ESA's implementing regulations provide that "[i]n order to monitor the impacts of incidental take, the Federal agency or any applicant must report the progress of the action and its impact on the species to the Service as specified in the incidental take statement." (50 C.F.R. § 402.14(i)(3).) The Service is responsible for specifying in the statement how the applicant is to monitor and report the effects of the action on listed species. (*Wild Fish Conservancy v. Salazar*, 628 F.3d 513, 531-32 (9th Cir. 2010).) The amount of take must be linked to a practical method to determine if that limit has been exceeded. O4-43

In the Biological Opinion for the HCP and ITP, the FWS will need to address all of these factors and account for all of those covered species in the action area, including providing a full explanation why the take of some listed species that may be impacted is not covered and its use of habitat acres rather than numeric limits for take of listed species. The Service cannot authorize an HCP for Covered Activities that may take listed species that are not covered in the ITP or another already existing take authorization under section 7 or section 10 because the Service cannot authorize activities for take of one species which would lead to unauthorized take of another species – to do so would violate the core of the ESA's prohibition on take.

*3. 2016 HCP Handbook*

In December 2016 the Service and NMFS adopted a new joint HCP Handbook. To the extent that this handbook is consistent with the ESA and other laws, it can provide helpful guidance to the Service in reviewing and approving HCPs.

For example, the 2016 HCP Handbook makes is clear that all listed species affected by Covered Activities must be addressed in the HCP. Regarding listed species in the plan area, the 2016 HCP Handbook states: O4-44

> Helpful Hint: All ESA-listed species that will be taken through implementation of covered activities must be included as covered species, or we cannot issue the incidental take permit (unless covered by another ESA mechanism). *The applicant must adjust covered activities to avoid take of ESA-listed species that are not covered by the HCP*.

(2016 HCP Handbook at 7-3; emphasis added.) FWS must also fully consider listed species that are managed by NMFS in considering a proposed HCP, this is particularly important for listed anadromous fish – many of which are present in the HCP plan area.

> 7.4.3 Anadromous Fish
> Close collaboration between the Services is required when an applicant's proposed covered activities *are likely to cause take of both FWS and NMFS listed species, such as salmon* and sturgeon. When both agencies are working with an applicant on development of an HCP, careful planning is necessary to ensure efficient development of the plan. Any differences the two agencies have about minimizing or mitigating take for a species or a life stage of a species in an HCP should be discussed early in the process so issues can be resolved.

(2016 HCP Handbook at 7-9; emphasis added.) The 2016 HCP Handbook also emphasizes the need for coordination with NMFS, other Federal and State agencies, tribes and local officials. (*See, e.g.,* 2016 HCP at 4-2 to 4-6 ("Identifying Stakeholders".)

The DEIR states:

> The steelhead South-Central California Coast ESU is not a covered species because NOAA Fisheries concluded that the existing covered activities listed in the HCP are not likely to take steelhead with the implementation of AMMs (NOAA Fisheries, 2008). In addition, the HCP does not introduce new covered activities into aquatic areas such as Arroyo Grande Creek and Pismo Creek where steelhead occur.

O4-44

DEIR at 6-46. However, FWS cannot rely on a 2008 letter rather than new consultation. And perhaps more importantly, the issue is not whether "new" activities are being introduced but whether take may occur due to the activities authorized under the HCP. Because take of steelhead may occur, particularly due to motorized vehicles crossing Arroyo Grande Creek, regardless of the AMMs steelhead should be a covered species and FWS should coordinate with NMFS to include steelhead in the HCP - unless motorized crossings of the creek are prohibited.

While the 2016 HCP Handbook provides useful guidance in many areas, the Center remains concerned that reliance on the no net loss policy could lead to ESA violations. According to the 2016 HCP Handbook, for take to be fully offset, the Services must determine that "the biological value that has been lost (from covered activities) will be at least replaced (through implementation of conservation measures) with equivalent biological value." While this bare minimum must be met, it is worth noting that the 1996 HCP Handbook did not use the "no-net-loss" goal at all, and instead framed this in terms of the requirements of Section 10 — to minimize and mitigate to the maximum extent practicable, which clearly supports the objectives of conservation including recovery. It appears the HCP derived this incorrect legal standard from the 2016 HCP Handbook, which cannot be properly relied on where it departs from the statutory requirements. For example, in this case the "net benefit, or at a minimum no-net-loss" standard

set forth in the 2016 HCP Handbook drastically departs from the statutory requirements for conservation and existing precedents, and reliance on that standard would result in a violation of the ESA. State Parks and the FWS must ensure that the HCP is truly a conservation plan and supports both survival and recovery of the affected listed species. And, as explained above, because the HCP is being developed by State Parks it must also meet the California legal requirements, which require that impacts to listed species be *fully mitigated.*

As a compliance mechanism for the Endangered Species Act ("ESA"), the HCP must ensure not merely the continued survival of the Covered Species, but also the recovery of these species. The Ninth Circuit explained that the purpose of critical habitat designations is not merely to ensure the species' survival, but also to "carve out territory" that is "essential for the species' recovery." (*Gifford Pinchot Task Force v. United States Fish & Wildlife Serv.,* 378 F.3d 1059, 1070 (9th Cir. 2004).) *Gifford Pinchot* concluded that the ESA views "conservation and survival as distinct, though complementary, goals, and the requirement to preserve critical habitat is designed to promote both conservation and survival." (*Id.*) Applying the principles of *Gifford Pinchot* here, the HCP must do more than merely mitigate the impacts of the Covered Activities and must ensure impacts to *all* listed species affected are fully considered and provided conservation value to support recovery. O4-44

**B. The draft HCP fails to provide needed information regarding impacts to listed species**

1. *Impacts to Covered Species included in the HCP from Covered Activities are not Adequately Identified or Analyzed*

As explained in detail above regarding the inadequacies of the Draft EIR, among the issues that are not adequately identified or analyzed are impacts to listed species from use of pesticides and herbicides. The HCP must provide more information on this issuel.

As discussed above in the wetlands section, the current activities in the Park and the SVRA utilize numerous pesticides and herbicides, primarily in order to control invasive species. Because some of the products are toxic to covered species as well as non-covered but sensitive species and/or their pollinators, the DEIR needs to analyze these impacts. If such use is continued, State Parks must clearly put in place mitigation measures that safeguard the non-target plants and animals that are covered species or other rare species and pollinators O4-45

*2. The Covered Activities may affect listed species in the Action Area that are not included as Covered Species and the Draft HCP does not ensure that impacts are fully avoided.*

As stated above, the HCP fails to include South-Central California Coast steelhead trout *(Oncorhynchus mykiss*) as a covered species. Steelhead may be taken by vehicles crossing Arroyo Grande Creek and other activities. The HCP should be revised to include steelhead as a covered species.

*3. Key Information About Covered Activities and Mitigation Measures is Absent.*

Many of the conclusions in the Draft HCP and Draft EIR appear to rely primarily on implementation of mitigation measures in plans that are not final or provided including:

- Predator management plan (AMM 37);
- New Particulate Matter Reduction Plan;
- Draft Aquatic Pesticide Application Plan;
- Revegetation plan(s) associated with Lake or Streambed Alteration Agreement (1600-2012-0001- R4);
- Nesting Season Management Plan(s);
- or other plans or protocols that are routinely used to avoid, minimize or mitigation impacts to species from current or proposed activities.

Under the Draft HCP implementation of all of these plans, measures, agreements, protocols, practices and standards depends heavily on discretionary application and enforcement by State Parks. Neither State Parks nor the Service can rely on documents that are not provided to the public for review in reaching the conclusions about effects to listed species. This would undermine public participation and review and is a significant flaw in the process. O4-45

ESA Section 10(a)(2)(8) requires the Secretary to provide opportunity for public comment addressing each one of the Secretary's findings under that section. In *Gerber v. Norton*, 294 F.3d 173, 178-184 (DC Cir. 2002), the D.C. Circuit considered the Secretary's approval of an HCP application which was based in large part on a map describing the placement of a road. The Court rejected the Secretary's approval in part because he failed to provide the map for public inspection prior to public comment. The court held that "opportunity for public comment must be a meaningful opportunity," which was not provided where information relied upon by the Secretary was not publicly available.

This HCP presents more troubling facts than *Gerber v. Norton*. In *Gerber*, the maps relied upon by the Secretary were available at a USFWS field office, just not publicly distributed as necessary to fulfill Section 10. In contrast, the HCP and Draft EIR repeatedly rely upon documents that have not been disclosed to the public at all. If the measures, plans, and other information are to be used as the basis of the Service's rationale for approving the Draft HCP and issuing an ITP, the Service must share that information and analysis with the public. (*See also* discussion above, regarding CEQA requirement that documents be provided.)

**C. The Draft HCP Presents Avoidance Measures That Are Unenforceable and Ineffective.**

Many of the measures relied on would require significant monitoring, reporting, and enforcement effort that is not certain to occur under the HCP and not fully funded. The HCP cannot rely on such measures to show that species will be conserved. O4-46

### D. The Draft HCP Fails to Provide for Conservation and Adequate Funding

Despite the mandates of the ESA that an HCP provide for habitat conservation to support listed species, the Draft HCP notes that sea level rise coupled with other activities may cause a net loss of habitat:

> If rising sea levels result in a net loss of covered species habitat over the term of the HCP, CDPR will discuss with the USFWS appropriate implementation measures to address these changes. Future actions responding to this changed circumstance will be determined by consensus agreement between CDPR and the USFWS, limited by the funding allocated for HCP and adaptive management implementation, and will be based on the nature and extent of the effects associated with rising sea levels.

O4-47

Draft HCP at 6-9. This is inadequate because State Parks does not consider ways to offset the impacts or commit to offsetting the impacts in the Draft HCP or Draft EIR and is not committed to implementing such action or providing the funds needed—undermining the very heart of the commitments that HCPs require in order to obtain "take" coverage under section 10.

### E. Draft HCP Fails to Adequately Address Climate Change and Sea Level Rise

Sea level rise (SLR) and other climate change impacts are already occurring and increasing flooding along California's coast and will increasingly have profound effects on our coast habitats including Pismo Beach and Oceano Dune SVRA (Heady et al. 2018).

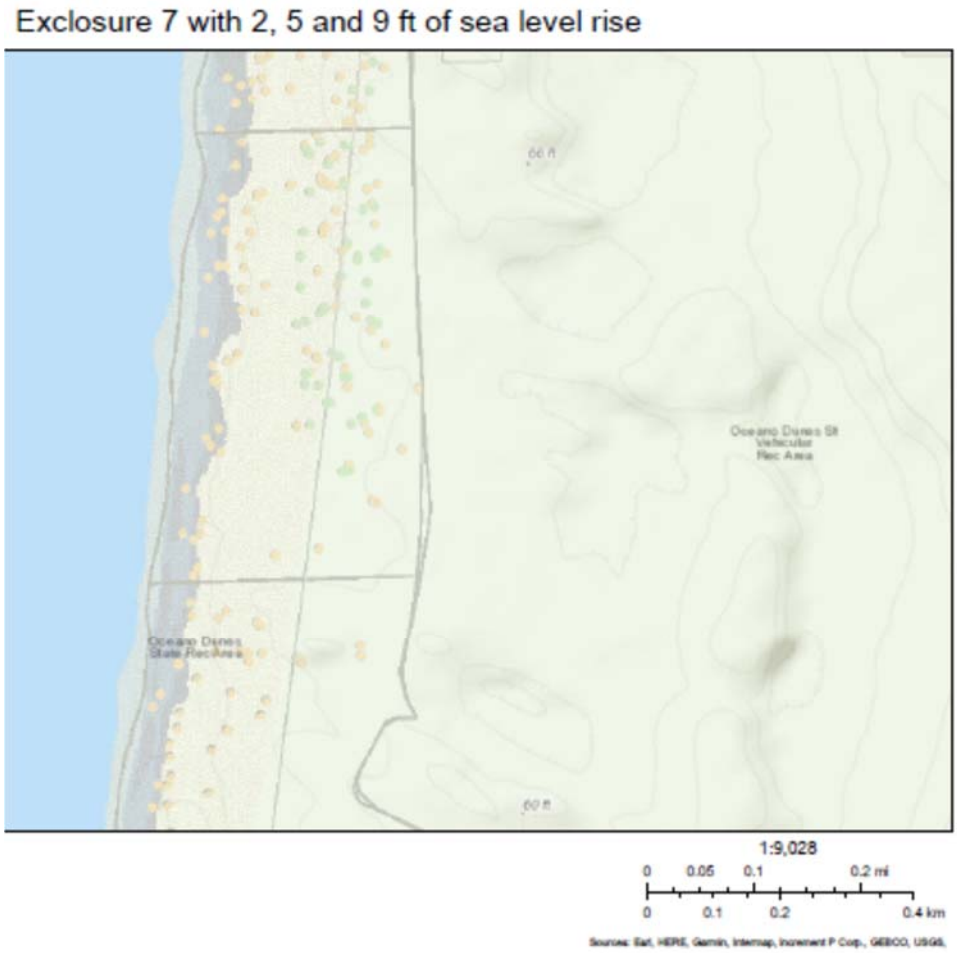
O4-48

Based on Bernard et al. (2018) and GIS data provided by CDPR, the SLR model shows, in the areas of the current breeding-season exclosures, significant reductions in the coastal strand and shoreline habitat where snowy plovers and California least terns have nested in the past. Figures 1 through 5 present the output from the model at the current breeding-season exclosures.




O4-48

Figure 1. Exclosure 6 – light gray = 2 feet SLR; medium gray – 5 feet SLR; dark gray – 9 feet SLR; orange dots – snowy plover nests; green dots – California least tern nests.



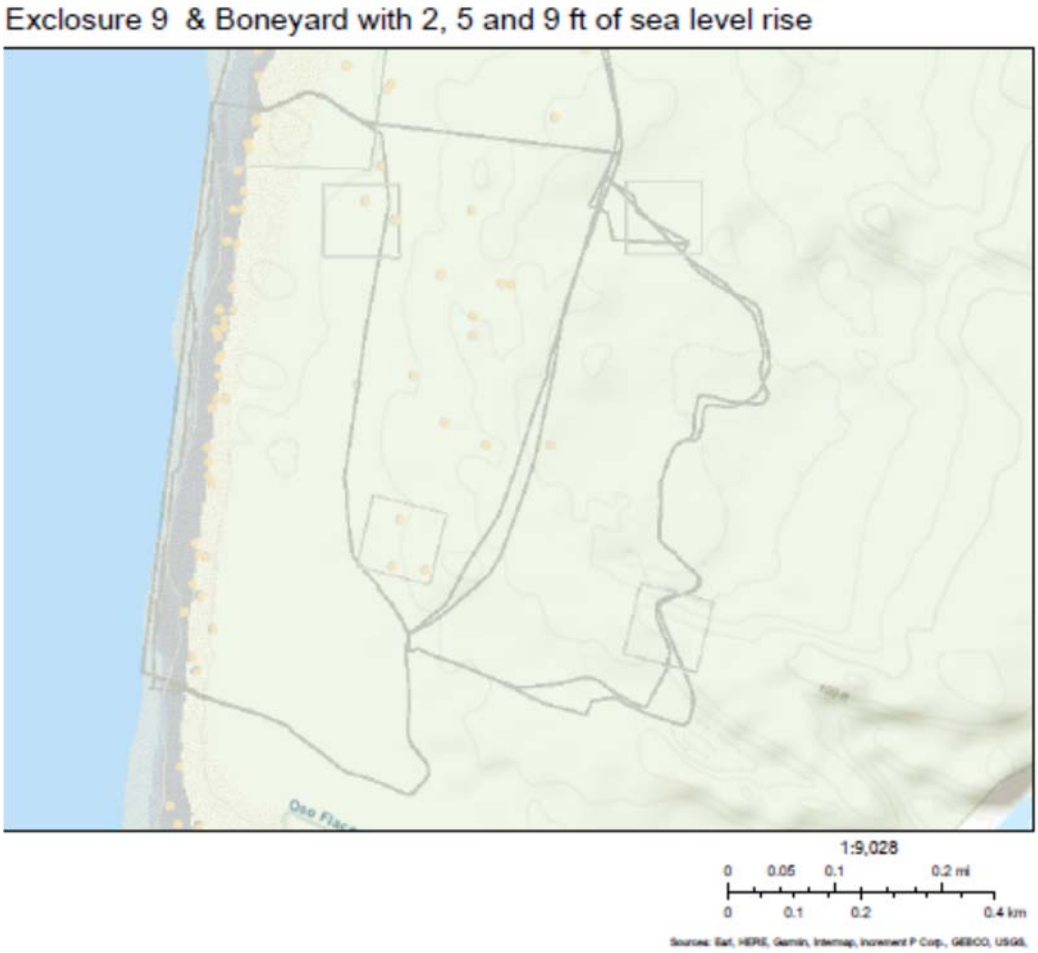

O4-48

Figure 2. Exclosure 7 – light gray = 2 feet SLR; medium gray – 5 feet SLR; dark gray – 9 feet SLR; orange dots – snowy plover nests; green dots – California least tern nests.



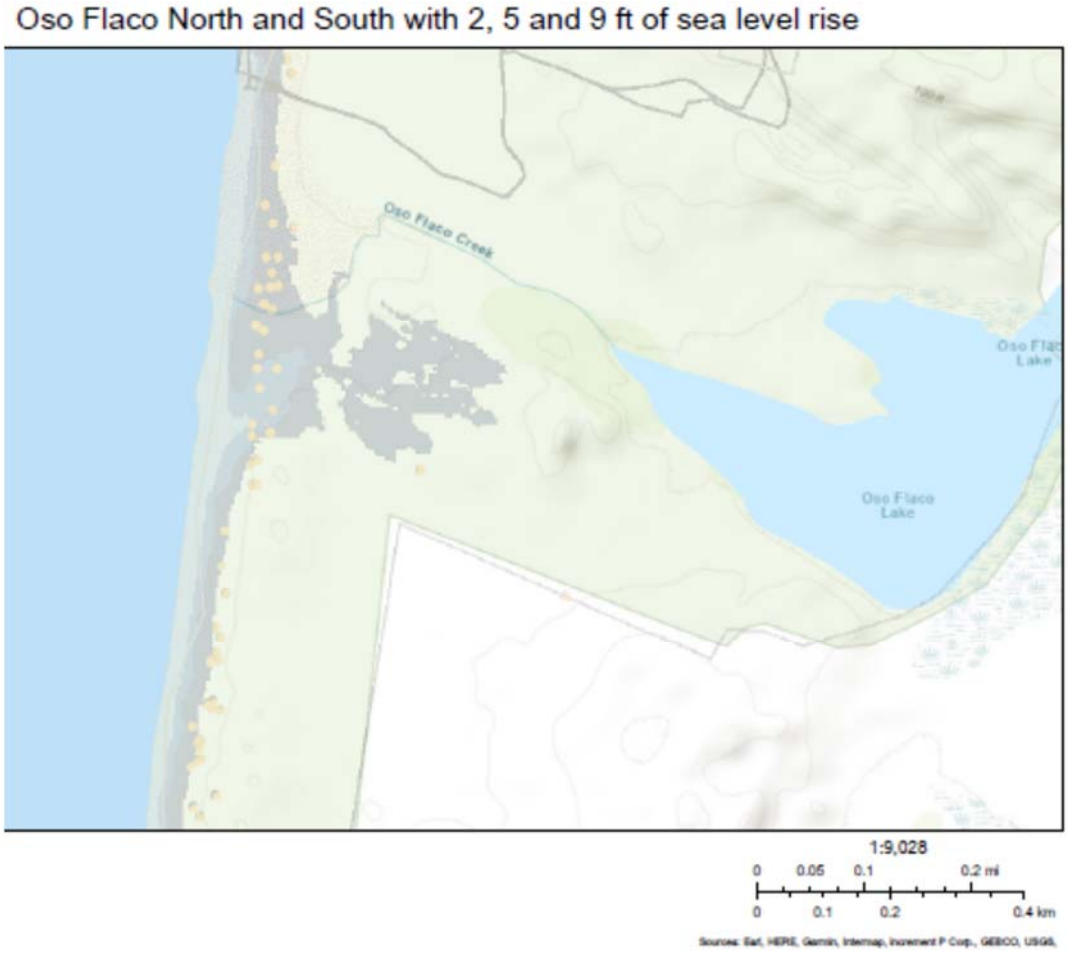

O4-48

Figure 3. Exclosure 8 – light gray = 2 feet SLR; medium gray – 5 feet SLR; dark gray – 9 feet SLR; orange dots – snowy plover nests; green dots – California least tern nests.




O4-48

Figure 4. Exclosure 9 and the Boneyard – light gray = 2 feet SLR; medium gray – 5 feet SLR; dark gray – 9 feet SLR; orange dots – snowy plover nests;




O4-48

Figure 5. Oso Flaco North and South – light gray = 2 feet SLR; medium gray – 5 feet SLR; dark gray – 9 feet SLR; orange dots – snowy plover nests;

One way to partially mitigate the impacts of ongoing sea level rise is to protect the coastal strand ecosystems and prevent activities that degrade them. Dugan and Hubbard (2010) identified the benefits to include:

> Increased conservation of these threatened coastal ecosystems could help retain sediment, promote the formation of dunes, and maintain biodiversity, wildlife, and human use in the face of rising sea levels.

The HCP needs to consider reducing or eliminating the riding areas and other impactful activities, including the proposed beach grooming, in order to prevent degradation of the coastal strand ecosystems and to help buffer the impacts from ongoing sea level rise.

An HCP cannot merely leave conditions for imperiled species slightly worse than they were prior to the existence of the HCP; the HCP must contribute to the both survival and

recovery of the species covered by the HCP. The Center urges the State Parks to reconsider and revise the HCP to ensure it will provide for needed conservation that will support recovery. O4-48

## IV. Conclusion

As detailed above, the proposed habitat conservation plan as outlined in the Draft HCP document fails to meet the requirements of both Federal and State law and the Draft EIR is woefully inadequate. We hope and expect that State Parks will carefully consider these comments and other comments from members of the public and revise the Draft HCP to ensure that it provides robust habitat conservation of all affected species, supporting both survival and recovery. We look forward to reviewing a revised Draft HCP and revised Draft EIR that addresses all significant impacts to the environment from the covered activities and ensures all significant impacts are analyzed, avoided, minimized, or if necessary mitigated. Please do not hesitate to contact us with any questions. O4-49

Sincerely,

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**Attachment:** Oceano Plovers May 2020, Jeff Miller

**References** (via email except for Federal and State agency documents marked *):

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http://www2.humboldt.edu/wildlife/faculty/colwell/pdf/Brindock%20&%20Colwell%202011.pdf

California Coastal Commission

June 21, 2019 Summary of Staff Recommendations, Oceano Dunes State Vehicular Recreation Area Coastal Development Permit 4-82-300 Review (65 pp.)

July 12, 2019 letter and PWP comments from Dayna Bochco, Chair, California Coastal Commission to Lisa Mangat, Director California Department of Parks and Recreation (18 pp.)

July 23, 2019 letter and attachment from John Ainsworth, Executive Director California Coastal Commission to Lisa Mangat, Director California Department of Parks and Recreation (6 pp.)

August 5, 2019 letter from John Ainsworth, Executive Director California Coastal Commission to Lisa Mangat, Director California Department of Parks and Recreation (1 pp.)

December 13, 2019 Letter from Kevin Kahn, Central Coast District Supervisor California Coastal Commission to Dan Canfield, Acting Deputy Director, California Department of Parks and Recreation, Off-Highway Motor Vehicle Recreation Division, James Newland, PWP Project Manager, California Department of Parks and Recreation, and Kevin Pearce, Acting Superintendent CA State Parks- Oceano Dunes District (4 pp.)

California Department of Parks and Recreation (CDPR)

January 23, 2020 Letter from Lisa Ann L. Mangat, Director, Department of Parks and Recreation to Jack Ainsworth, Executive Director. California Coastal Commission

*2019 Nesting of the California Least Tern and Western Snowy Plover at Oceano Dunes State Vehicular Recreation Area, San Luis Obispo, California – 2019 Season. Publication by California Department of Parks and Recreation, Off-Highway Motor Vehicle Division, Oceano Dunes District. November 2019. Pgs. 173

*2018 Nesting of the California Least Tern and Western Snowy Plover at Oceano Dunes State Vehicular Recreation Area, San Luis Obispo, California – 2018 Season. Publication by California Department of Parks and Recreation, Off-Highway Motor Vehicle Division, Oceano Dunes District. November 2018. Pgs. 174

*2017 Nesting of the California Least Tern and Western Snowy Plover at Oceano Dunes State Vehicular Recreation Area, San Luis Obispo, California – 2017 Season. Publication by California Department of Parks and Recreation, Off-Highway Motor Vehicle Division, Oceano Dunes District. November 2017. Pgs. 193

*2016 Nesting of the California Least Tern and Western Snowy Plover at Oceano Dunes State Vehicular Recreation Area, San Luis Obispo, California – 2016 Season. Publication by California Department of Parks and Recreation, Off-Highway Motor Vehicle Division, Oceano Dunes District. November 2016. Pgs. 204

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2019 Western Snowy Plover (Pacific Distinct Population Segment) 5-year Review. Pgs. 11. https://ecos.fws.gov/docs/five_year_review/doc6166.pdf

*2007 Recovery Plan for the Pacific Coast Population of the Western Snowy Plover (*Charadrius alexandrinus nivosus*). Vol. 1 California/Nevada Operations Office, U.S. Fish and Wildlife Service, Sacramento, CA. Pgs.292. https://ecos.fws.gov/docs/recovery_plan/070924_2.pdf

# Attachment

**Oceano Plovers May 2020**

Since the closure of Oceano Dunes State Vehicular Recreation Area (ODSVRA) to off-road and public street legal vehicles due to COVID-19, protected western snowy plovers (*Charadrius nivosus nivosus*) have been documented in areas that are normally open to vehicles.

On May 15, 2020 I visited ODSVRA to document snowy plovers. I am a long-time birdwatcher and have extensive experience with western snowy plovers, and observe them regularly. I hiked along the beach and foredunes from MP 1 to MP 6, which is where the beach exclosure area starts to protect nesting and fledging plovers.

State Parks has installed extensive areas of stakes with mylar flagging, apparently to deter snowy plover nesting. Most of the mylar flagging stakes are inside the fenced restoration areas between MP 4 and MP 6, east of the beach. However, there is one 60m x 20m patch of mylar flagging installed on the foredunes near the beach, near MP 4 and the bathrooms. See photos below. I saw 4 adult snowy plovers right near this area.




*Mylar flagging near MP 4*

I documented 11 adult snowy plovers using the beach and foredunes between MP 4 and MP 5, outside the regular exclosure areas. See photos below.





*Adult snowy plovers between MP4 and MP 6, May 15, 2020*

Just south of MP 6, where the beach exclosure starts, I saw 4 adult snowy plovers with 4 chicks – this was just inside the beach exclosure area, and about 50 yards south of a heavily traveled riding area at MP 6.

On May 25, 2020, I revisited ODSVRA and again hiked along the beach and foredunes from MP 1 to MP 6.

State Parks had installed additional stakes with mylar flagging in the foredunes north of MP 4. I counted 46 Mylar stakes in 3 areas north of MP 4.

I documented 24 adult snowy plovers and 3 snowy plover chicks using the beach and foredunes between MP 4 and MP 6, outside the regular exclosure areas. See photos below.

I observed 4 adult snowy plovers in the foredunes at the entrance to the riding area north of MP 4. This is where new mylar stake patches have been installed. I observed 7 more adult snowy plovers in the foredunes around MP 4.5, even with the bathrooms, where a patch of mylar is. I observed 7 more adult snowy plovers in the foredunes at MP 5. I observed 4 more adult snowy plovers, with 3 plover chicks, in the foredunes 100 meters north of MP 6. This is in a normally high traffic area that leads from the beach to the sand highway. I observed 2 adult snowy plovers on the beach at MP 6.



*One of three small snowy plover chicks observed north of MP 6, May 25, 2020*



*Adult snowy plovers between MP4 and MP 6, May 25, 2020*

Just south of MP 6, in the exclosure area, I observed 13 adult snowy plovers, and 2 snowy plover chicks.

Jeff Miller
Senior Conservation Advocate
Center for Biological Diversity

G | D | B Gatzke Dillon & Ballance LLP
LAWYERS

January 23, 2026

*By Email comment@oceanoduneshcp.com*

Ronnie Glick, Senior Environmental Scientist
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*Re: Comments on Oceano Dunes SVRA Habitat Conservation Plan and Its Attendant Recirculated Environmental Impact Report*

Dear Mr. Glick:

This firm represents EcoLogic Partners, Inc. ("EcoLogic"), a consortium of nonprofit organizations dedicated to preserving recreational access to public lands in the western United States, and Specialty Equipment Market Association ("SEMA"), a nonprofit trade organization whose members manufacture and sell a variety of products for both street legal and off-highway vehicles (OHVs). On behalf of EcoLogic and SEMA, we have reviewed the proposed Habitat Conservation Plan (HCP) for the Oceano Dunes State Vehicle Recreation Area ("ODSVRA"), as well as the HCP's attendant Recirculated Environmental Impact Report ("REIR"). Thank you for the opportunity to comment on these documents.

While we recognize the need for and importance of the HCP, and while we commend State Parks for the excellent progress it has made over the last decade in improving nesting rates for Western snowy plover and California least tern, we believe the HCP, as currently drafted, fails to strike the proper balance between the SVRA's recreation mandate and the federal Endangered Species Act's requirement to protect listed species. As explained in this letter, the HCP's analytical assumptions regarding OHV risks to listed species tend to be "worst case" and are often based on little to no evidence. This, in turn, tilts the HCP heavily and unnecessarily towards biological conservation at the expense of public recreation. This same bias infects the REIR. O5-1

We explain these points further below.

## I. INTRODUCTION

The Draft Habitat Conservation Plan (HCP) for the Oceano Dunes District, prepared to secure a 25-year Incidental Take Permit (ITP) for ten covered species, relies heavily on formalizing and continuing restrictive management actions, that have historically limited access for Off- O5-2

Highway Vehicle (OHV) recreation, rather than proposing flexible, adaptive strategies to accommodate the area's primary use.[1] The HCP uses overly conservative, worst-case scenarios for cryptic species and incorporates conservative measures (like dust control vegetation) that permanently reduce the available open riding area, thereby fundamentally contradicting the mandate of the California Off-Highway Motor Vehicle Recreation Act (Pub.Res.Code, §§ 5090.01, et seq.) to ensure "that quality recreational opportunities remain available for future generations…and…balance OHV recreation impacts with programs that conserve and protect cultural and natural resources" of the SVRA.[2] The HCP, despite its detailed structure for species management, fails to adequately balance conservation goals with the state mandate for OHV recreation because it enshrines and expands management control based on highly conservative take thresholds, creating an unacceptable, long-term precedent for prioritizing access restriction over optimizing balanced use.[3] O5-2

Further, the REIR's proposed solution for restoring OHV access at the ODSVRA – the incremental reduction of seasonal exclosures (CA-50) – is flawed because it makes restoration of 109 currently-restricted acres entirely contingent upon the park meeting uncertain biological standards over a minimum of eight years, creating an unacceptable level of regulatory uncertainty and management instability for OHV users who visit the SVRA. O5-3

## II. ANALYSIS

### A. Failure to Assess Impact of Avoidance and Minimization Measures (AMMs) on OHV Recreation

To manage take of listed species, the HCP relies on more than 500 Avoidance and Minimization Measures (AMMs), many of which have the potential to reduce the areas open to OHV use at the SVRA, thus continuing the trend of shrinking the riding opportunities at the park. The REIR, however, does not adequately evaluate these AMMs for their impacts on recreation or their potential inconsistency with the legal requirements of the OHMVR Act. O5-4

[1] HCP § 2.2.2.1.1 (Installation and Maintenance of Western Snowy Plover and California Least Tern Protection Fences (CA-12-a)), at 2-15
[2] HCP § 1.1 (Overview and Background), at 1-1
[3] HCP § 2.2.2.1.1 (Installation and Maintenance of Western Snowy Plover and California Least Tern Protection Fences (CA-12-a)), at 2-15 (detailing predator exclusion fencing for SNPL/CLTE habitat indicating a planned Avoidance and Minimization Measure); § 2.2.5.11 (Reduction of the Boneyard and 6 Exclosures (CA-50) (discussing exclosure reduction relevant to HCP's AMMs, indicating potential change to habitat protection measures), at 2-44.

### B. HCP's and REIR's Focus on OHV Restrictions is Misdirected, Given That Predator Management Has Been Primary Factor in Improving Nesting Rates for Listed Bird Species

Both the HCP and REIR focus almost entirely on additional OHV use restrictions, such as the expanded Southern Exclosure, to achieve nesting and fledge objectives for Western snowy plover and California least tern. This focus is misdirected because the monitoring data set forth in Appendix G of the HCP show that targeted predator control, not restrictions on OHV use, has been the primary factor in improving nesting and fledge rates for these two listed bird species. O5-5

### C. HCP and REIR Rely on Scant Evidence OHV-Related Take of Cryptic Species to Impose Long-Term Restrictions on OHV Use

The HCP's take estimates for cryptic species like the Southwestern pond turtle (SWPT) are based on very little evidence; yet these take estimates inform the management measures that will be implemented at the SVRA. This means that OHV use will be restricted or lost to protect against low-probability risks. For species like SWPT, California red-legged frog (CRLF), and Western spadefoot (WSF), where documented take is rare or absent, the use of highly conservative, worst-case take thresholds (e.g., 8 SWPT adults/juveniles over the term) is not sufficiently supported by evidence showing that current levels of OHV use need to be further reduced.[4] The stringent restrictions already in place, such as those detailed in the Superintendent's Orders (Appendix B), make the remaining anticipated take threshold an overestimation of risk, thereby unnecessarily burdening OHV use through overly conservative annual consultation triggers.[5] O5-6

For example, the HCP explicitly states that intensive surveys have not yet been conducted for SWPT[6] and that "very little is known about WSF in the HCP area."[7] Thus, the HCP's take quantification relies on worst-case scenario estimations or extrapolations from limited data, making the quantified take highly speculative and potentially flawed.[8] The REIR does not adequately address how this approach to take reduction impacts OHV recreation.

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[4] HCP § 4.5.2 (Anticipated Take of Southwestern Pond Turtle), at 4-129-30 (quantifying take thresholds, and addressing difficulty detecting take).
[5] HCP § 4.3.1.1.1, at 4-5 (confirming AMMs successfully protected SNPL nests and increased reproductive success to support the HCP's proposed management strategy).
[6] HCP § 3.3.3.6 Suitable Habitat in the HCP Area, at 3-59.
[7] HCP § 3.3.5.4 Occurrence within and Adjacent to the HCP Area, at 3-69.
[8] HCP § 4.5.2 Anticipated Take of Southwestern Pond Turtle, at 4-130; § 4.7.1.1.3 (Pedestrian Activities (CA-3)) (addressing pedestrian impact on WSF, minimizing perceived threat from visitors to the covered species); Table 4-6 Summary of Estimated Southwestern Pond Turtle Take

**D. HCP Would Create Unnecessarily Large Buffers Around Least Tern Nests, and the REIR Fails to Analyze the Impact of Such Buffers on OHV Recreation**

Another example of the HCP's tendency to overprotect species at the expense of recreation is the proposal to create and maintain buffers of 984 feet around least tern nests in the Open Riding Area (ORA). (See HCP Appendix F [Management Actions – Open Riding Area Nest Buffer Fencing].) There is no evidence that such large buffers are necessary to protect nesting adult terns, their eggs or chicks, or fledglings. In short, the continued use of expansive buffers is scientifically unjustified, especially since the HCP's own monitoring (Appendix G) confirms the high success of focused predator management.[9] The REIR does not adequately evaluate the impact that the proposed nest buffers will have on OHV recreation. O5-7

**E. HCP and REIR Rely on Flawed Model for Establishing Habitat Suitability Values and Species Population Objectives**

One of the major changes between the 2020 draft HCP and the 2025 version under review here is the population objective for Western snowy plover. In 2020, the objective was 155 breeding adults; in 2025, the objective has been increased to 180 breeding adults. This shift is based on Habitat Suitability Values (HSV) from MacDonald et al (2010).[10] The HSV model, however, excluded key biotic variables like vegetation cover and prey availability, which the HCP itself acknowledges have a substantial influence on site occupancy and productivity.[11] Relying on a model that intentionally omitted key biological variables to establish a core population objective weakens the scientific foundation of the plan's conservation goals. The REIR fails to adequately evaluate how use of this flawed HSV model affects OHV recreation at the SVRA. O5-8

**F. The REIR's Alternative Analysis Violates CEQA, as It Fails to Consider Any Alternative That Would Guarantee Increased OHV Opportunities – Or At Least No Net Loss of OHV Opportunities – at ODSVARA**

The REIR's alternative discussion is unnecessarily truncated, as it does not consider any alternative that maintains or expands ODSVRA's capacity to accommodate motorized recreation. Instead of exploring such an alternative, the REIR indicates that future expansion of OHV use areas, if it is to occur at all, will be contingent on highly-aspirational biological objectives that may never be reached, regardless of OHV use at the park. In failing to evaluate alternatives that expand or at least prevent loss of OHV opportunity – something expressly requested by OHV stakeholders O5-9

[9] HCP Appendix G, at 29 (detailing NOHA predation on plover nests and documenting successful capture of predator, "Following successful capture of the targeted NOHA, no other plover predations attributed to NOHA occurred and observations of male NOHA decreased significantly.").
[10] HCP, at 5-3.
[11] Id.

– the REIR violates CEQA as well as the OHMVR Act's mandate to maximize OHV recreation if doing so can be accomplished without substantially undermining resource conservation goals. O5-9

**G. The REIR Fails to Identify Adequate Measures to Mitigate the HCP's Impacts on OHV Recreation**

The REIR is legally flawed because it does not provide mitigation measures to ensure that the HCP and its focus on protecting listed species does not erode or frustrate sustained and predictable OHV access. O5-10

## III. CONCLUSION

The HCP's approach to take reduction at the ODSVRA relies heavily on speculative take estimates and overly conservative species protection measures. As a result, the HCP has the potential to undermine the legislative purpose of the park, which is to provide OHV recreation to the general public. The REIR does not adequately analyze this significant impact; nor does the REIR develop alternatives or mitigation measures for reducing this impact to a less than significant level. For this reason and others described in this letter, the REIR fails to satisfy CEQA and must be revised. O5-11

Sincerely,



David P. Hubbard
Of Gatzke Dillon & Ballance LLP

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1/23/26

By Email:

Off-Highway Motor Vehicle Recreation (OHMVR) Division
PO Box 942896
Sacramento CA 94296-0001
comment@oceanoduneshcp.com

**RE: Friends of Oceano Dunes' Comments on State Parks' July 2025 Habitat Conservation Plan and Associated Environmental Documentation, Oceano Dunes District**

Friends of Oceano Dunes ("Friends"), a California not-for-profit corporation, representing members and users of the Oceano Dunes State Vehicle Recreation Area ("SVRA"), hereby submits these comments.

The Oceano Dunes SVRA receives ~2 million annual visitors and is one of the most visited State Parks in California.

Friends remains concerned about the continued reduction of the acreage available for OHV recreation and camping, which is the purpose of the park.

**Neither State Parks nor the U.S. Fish and Wildlife Service has any authority to increase the western snowy plover ("plover") "breeding potential" standard of 155 breeding pairs to 180 breeding pairs. The result of that unauthorized action is an unauthorized reduction of acreage for OHV recreation and camping.** O6-1

**State Parks needs to start working for the benefit of OHV recreation and camping while truly balancing environmental protection instead of placing environmental concerns on a pedestal to the repeated detriment of the very purpose of the park.** O6-2

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Friends of Oceano Dunes is a 501(c)(3) California not-for-profit corporation. Friends represents environmentalists, equestrians, campers, fishermen, families and off-road enthusiasts who enjoy the benefits of public access through responsible recreation at the Oceano Dunes State Vehicular Recreation Area (ODSVRA). Friends seeks to maintain Access For All!

State Parks is failing to meet the needs of the off-roading community as required by Public Resources Code ("PRC") §§ 5090.02(c)(1) and 5090.43(a). That statute mandates that existing **OHV areas be expanded, added to, and managed for long-term motor vehicle recreation.** The statute also mandates that the OHMVR Program supports motorized off-highway access to non-motorized recreation opportunities. State Parks repeatedly places too great an emphasis on conservation despite the Legislature's mandate to support OHV recreation. Within the SVRA presently, only about 16 percent of the total 5,000 acres is open to OHV recreation. That does not support OHV recreation to the "fullest appropriate public use," and makes a mockery of the Legislature's command. O6-2

**Comments & Corrections Re Draft HCP:**

*Overall*: The HCP discusses legal limits of vehicles and camping authorized by the certified LCP and CDP, but then indicates State Parks has "administratively reduced" those limits, whatever that means. Friends questions whether State Parks has carte blanche legal authority to "administratively reduce" activity authorized by the LCP and CDP, or whether legal authority exists for the reductions of vehicles and camping to date. State Parks appears to have imposed the reductions **beyond** what is required by the SVRA statute and the San Luis Obispo County Air Pollution Control District's Stipulated Order of Abatement (and associated air quality rules), without any legal basis for doing so. State Parks fails to specify or identify what legal authority authorizes "administrative reductions" beyond what is legal required by law. O6-3

The administrative reductions also create confusion in the HCP. What level of activity is covered by the HCP? It is the maximum legally authorized by the LCP and CDP, or is it only the limits under the "administrative reductions"?

The HCP discusses the Oceano Dunes Biodiversity Management Plan. Is there any significance to the California Coastal Commission's (CCC) refusal to accept this plan? The HCP should discuss this. O6-4

- p. xix: states that "The approximately 1,208-acre portion of the HCP area open to vehicles." The HCP, corresponding environmental document and the soil conservation plan are inconsistent on the total riding area acreage. Friends requests a detailed acreage analysis Identifying original boundary and all changes to date. O6-5

- p. xx: "Grand Dunes Trail" is not defined. O6-6

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- p. 1-4: the HCP states: "The Phillips 66 leasehold lies between the open riding area and communities east of Oceano Dunes SVRA; it is closed to all visitors. Oceano Dunes District manages the leasehold area (e.g., maintains fences and manages resources), as needed. This area can be used for emergency access. Phillips 66 maintains the road through the leasehold property to ensure access for pipeline maintenance." There is no leasehold. That statement needs to be corrected to reflect the precise legal status of those lands. **O6-7**

- p. 1-9: now that the CEQ regulations have been withdrawn, what is the impact of that federal action on the NEPA analysis in this case? **O6-8**

- p. 1-11: the discussion of the "General Development Plan" needs to recognize that plan has been amended **O6-9**

- p. 2-3: sometimes the HCP says 2 million people visit the park annually, sometimes it uses the 1.5 to 1.9 million number. Which is correct? **O6-10**

- Table 2-1: The HCP, corresponding environmental document and the soil conservation plan are inconsistent on the total OHV riding area acreage **O6-11**

- Table 2-1: there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands **O6-12**

- Table 2-1: the HCP and corresponding environmental document are inconsistent on the precise size of the 300-acre exclosure **O6-13**

- p. 2-9: HCP needs to define "the windy season" **O6-14**

- p. 2-11: there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands **O6-15**

- p. 2-16: "bumpout" fencing should be halted. Any nest that is feared to be disturbed should be relocated for captive rearing as described in section 2.2

- p. 2-17: "single nest exclosure" should be stopped. Any nest that is feared to be disturbed should be relocated for captive rearing as described in section 2.2 **O6-16**

- p. 2-19: State Parks should stop closing OHV open riding areas, unless the standards of PRC § 5090 *et seq*. must cease. Any nest that is feared to be disturbed should be relocated for captive rearing as described in section 2.2

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- p. 2-22: cite or provide all "substantial evidence [that] exists indicating that human activities affect the type number and activity pattern of predators" O6-17

- p. 2-26: State Parks must define the natural state of the Oceano Dunes in a way that is fully supported by historical and scientific evidence. Historical articles, maps and descriptions document the Oceano Dunes as an active sand dune system with historically sparse vegetation. The Oceano Dunes have always been a windy environment and prone to sand movement. The dunes are always changing, like a slow-moving river of sand across the landscape…that is how the Nipomo Mesa was created!

  Therefore, the practice of "re-establishing native plants in areas where exotic plants have been removed" is unacceptable, unscientific and changes the natural environment without justification. Non-native plants should be removed and the dunes returned to their barren natural state as they have existed long before OHV recreation was introduced here O6-18

- p. 2-27: Habitat restoration assumes you have defined what natural state existed at what time. Provide all evidence and supporting information on how State Parks has defined the "natural state" of the Oceano Dunes.

- p. 2-28: "restoration projects" are not defined to a baseline natural state

- p. 2-29: "enhance habitat characteristics" is not defined to a baseline natural state

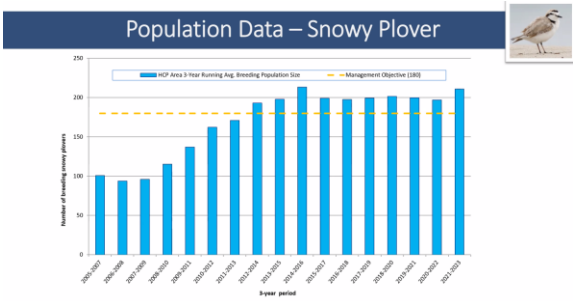
- p. 2-37: Grover Beach Lodge must provide space for OHV users to "air up and down" while entering and exiting the beach. Currently accommodation is being made for equestrians to park, yet those users pay nothing to use the SVRA O6-19

- p. 2-40: "mass emissions from the Oceano Dunes SVRA" is misleading because it includes ALL particles from the ocean! This needs to be corrected O6-20

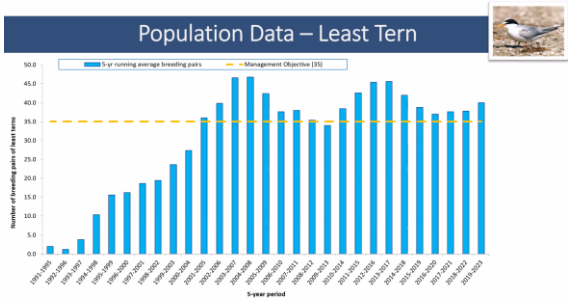
- p. 2-45: reduction of the Post 6 exclosure can be accomplished while still meeting the recovery goals by maintaining the 155 breeding potential (not 180 breeding pairs). The plover breeding potential should remain at 155 and not arbitrarily increase to 180. The least tern goal also should not be increased O6-21

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Three-year running average number of breeding adult snowy plovers in the HCP area from 2005-2023 with HCP management objective




Five-year running average number of breeding least tern pairs in the HCP area from 1991-2023 with HCP management objective

It is not reasonable to arbitrarily inflate the goals at the expense of OHV recreation and camping. Doing so when there is no federal legal requirement to do so is inconsistent with PRC § 5090 *et seq.*'s command to "expand wherever possible" and utilize the lands to their "fullest appropriate public use." O6-21

- p. 2-45: there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands O6-22
- p. 3-1: the "natural history of each of the covered species" has not been defined O6-23
- p. 3-3: there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands O6-24
- p. 3-4: State Parks' mapping of existing vegetation in 2022 does not adequately define the natural state of the dunes. The natural state of the dunes is documented in historical pictures and documents of mostly barren sand dunes. Human planting of vegetation a 100 years ago should not be recognized as "natural" O6-25
- p. 3-4: there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands O6-26
- p. 3-20: states there have been 43 nests in the open riding area over an 18-year period, or an average of 2.3 nests per year. That makes take a very remote possibility within the riding area. If you delete the year 2020 aberration, the average drops to less than 1 nest per year. Take is an extremely remote possibility. O6-27
- p. 3-22: claiming that the dunes are "highly degraded by historical land uses" is not accurate. Further, State Parks has failed to define the "natural state" of the dunes…which is mostly barren. It is unclear how barren sand has been degraded. O6-28

- p. 3-21 and 3-22, see also p. 4-4 and Map 25: states as follows: "Tertiary habitat provides very little of the physical and biological features to support behavioral activities such as breeding, foraging, and roosting. These features (or the location of these features) are assumed to provide marginal or low-quality habitat because they are generally located far from the shore, contain only low-quality habitat features (e.g., vegetated dunes), or have been highly degraded by historical land uses (e.g., recreation on beaches, indirectly degraded by adjacent urban development). SNPL are anticipated to **rarely nest** in tertiary habitat or otherwise use this habitat for foraging and roosting. The portion of Pismo Beach located north of Addie Street, including the Pismo Pier (Map 10), was identified as tertiary habitat, since the habitat in this area has been rendered unsuitable by historic human activity and adjacent urban development. In addition, tertiary habitat was defined as all other potentially suitable habitats in the HCP area not mapped as primary or secondary."

  In other settings, that reference has led to confusion among biologists and non-biologists alike, since such area is not normally protected habitat. The associated EIR also discusses "tertiary habitat" as areas where the birds NEVER or almost NEVER nest. If that is the case, what is the value of identifying such areas? Is there any scientific literature supporting such a designation if the birds essentially never nest there? If the birds NEVER or almost NEVER nest there, isn't more of a fluke or aberration rather than viable habitat? "Tertiary habitat" is not protected under federal or state law and it serves no purpose to identify such areas. It is not part of any critical habitat area. O6-29

  The agencies are using a habitat standard that is not supported by statute, regulation or science and are exceeding their respective authority in doing so.

- Table 3-2: references "tertiary habitat" for the plover. But it doesn't explain whether that is a legitimate or accepted biological concept for those birds specifically. In other settings, that depiction has led to confusion among non-biologists, since such area is not normally protected habitat. The associated EIR appears to discuss "tertiary habitat" as areas where the birds NEVER or almost NEVER nest. If that is the case, what is the value of identifying such areas? Is there any scientific literature supporting such a designation if the birds essentially never nest there? If the birds NEVER or almost NEVER nest there, isn't more of a fluke or aberration rather than viable habitat? "Tertiary habitat" is not protected under federal or state law and it serves no purpose to identify such areas. It is not part of any critical habitat area.

The Table shows that State Parks only found 14 nests (near the edge of the habitat) in nearly a 20-year period. As such, what purpose can be served by identifying more than 3,500 acres as such habitat?

The agencies are using a habitat standard that is not supported by statute, regulation or science and are exceeding their respective authority in doing so.

- Table 3-9, see also Map 10, Map 12 and Map 26: shows that no California Least Tern has ever nested in "tertiary habitat." If that is the case, what is the value of identifying such areas? Is there any scientific literature supporting such a designation if the birds never nest there? "Tertiary habitat" is not protected under federal or state law and it serves no purpose to identify such areas. It is not part of any designated critical habitat area.

  The agencies are using a habitat standard that is not supported by statute, regulation or science and are exceeding their respective authority in doing so.

O6-29

- p. 3-65: there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands
- p. 3-88: there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands
- p. 3-90: there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

O6-30

- p. 4-5: "Any nests found in the riding area will be quickly protected with symbolic or wire fencing and a large single-nest exclosure will be installed as soon as possible, as appropriate, thus reducing the likelihood of a vehicle striking a SNPL or crushing a nest." Any nest that is feared to be disturbed should be relocated for captive rearing as described in section 2.2

O6-31

- p. 4-6: the AMM 22 number should be increased to ensure reproductive success. Why limit that to a small number when the offsite rearing has nearly a 100% success rate. AMM 22 numbers should be increased by a factor of 5 to ensure success, please change to "60 eggs/20 nests and 60 chicks/20 broods". Likewise change the notification threshold to "40 eggs and 40 chicks." State Parks should use the adaptive rearing process to the maximum extent possible in order to ensure success while allowing continued OHV recreation and camping.

O6-32

- p. 4-6: provide the Mad River biologist study from 2005 that is referenced. **O6-33**

- p. 4-6: delete "Although unlikely, it is still possible that a SNPL roosting or foraging at night could be struck by a vehicle, especially during the non-breeding season." or include all possible but unlikely scenarios…like being hit by park ranger, lightning, frisbees, UAVs…or any other potential harm. The existing language reflects an anti-OHV bias. **O6-34**

- p. 4-7: explain how vehicles can disturb the plover, but not disturb or deter predators **O6-35**

- p. 4-8: "Motorized vehicle recreation may reduce available habitat for SNPL." That statement is confusing given that OHV recreation also may remove invasive species and deter predators, which **creates and enhances plover habitat**. There needs to be more discussion on the benefits of OHV recreation to the sensitive species **O6-36**

- p. 4-9: "Specifically, any nests found in the open riding area will be protected with single-nest exclosure with a minimum 100-foot buffer." That needs to be changed to: Any nest found in the open riding area will be collected in accordance with AMM 22.

- p. 4-9: "Specifically, any nests found in the open riding area will be protected with single-nest exclosure with a minimum 100-foot buffer." That needs to be changed to: Any nest found in the open riding area will be collected in accordance with AMM 22.

- p. 4-9: "Nests in fenced areas but within 100 feet of the open riding area will receive a bumpout." That needs to change to: Any nest found within 100 feet of the open riding area will be collected in accordance with AMM 22. **O6-37**

- p. 4-10: "If nests are found in the 48-acre foredune, the area is closed to the public. Finally, additional fencing (i.e. bumpout) will be installed to enlarge the Southern Exclosure or other closed area if necessary, to provide a 100-foot buffer." That needs to change to: Any nest found within 100 feet of the open riding area will be collected in accordance with AMM 22.

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- p. 4-20: " Single-nest exclosures can also pose a risk to incubating adult SNPL because they may increase the likelihood that predators will recognize the exclosure and prey on the attending adults." Eliminate the need for single nest exclosures by collecting in accordance with AMM 22. **O6-37**

- p. 4-27: Please explain "Habitat Restoration"...what is the baseline used to restore to? Please provide historical evidence to support that claim. **O6-38**

- p. 4-31: "The placement of restroom facilities within SNPL breeding habitat reduces the amount of habitat available to SNPL for breeding by precluding them from nesting within the footprint of the structures." You can increase breeding habitat by **restoring the 7.5 reveg island to open sand sheet for camping** the way it existed before State Parks removed it for a bathroom that it never installed. **O6-39**

- p. 4-50: add clarification to the East Boneyard discussion highlighting that it is NOT located within designated critical habitat area for the plover. **O6-40**

- p. 4-52: "the HCP ensures that the 6 Exclosure will not be reduced unless specific criteria are met, including obtaining a breeding population size greater than 180 SNPL for 3 consecutive years and a fledge rate of 1.0 fledgling per breeding male over the same period (section 5.2.3)." The habitat suitability values and aerial measures of available potential habitat resulted in a Management Potential Breeding Number of 155 (per pg 5-3) adult SNPL for the HCP area not 180! The passive construction of that sentence seeks to hide the fact that there is no legal basis for moving the goal post. Neither **State Parks nor the U.S. Fish and Wildlife Service may arbitrarily select new parameters that are neither required nor authorized by law. If there are changes to the recovery standards or goals, the adopted western snowy plover recovery plan must be amended and re-circulated for public comment.** **O6-41**

- p. 4-52: "Any nests found outside the reduced area of 6 Exclosure in the open riding area will be protected by a single-nest exclosure to provide a minimum 100-foot buffer, thus reducing the likelihood of direct impacts to nesting SNPL." Any nest found in the open riding area will be collected in accordance with AMM 22. **O6-42**

- p. 4-56: AMM 22 numbers should be increased by a factor of 5 to ensure success, please change to "60 eggs/20 nests and 60 chicks/20 broods." Likewise, the agencies should change the notification threshold to "40 eggs and 40 chicks". **O6-43**

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- p. 4-210: there is no “leasehold” with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

- p. 4-213: there is no “leasehold” with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

- p. 4-222: there is no “leasehold” with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

O6-44

- p. 5-3: " Because the adult breeding trends in the HCP area over the last 10 years have exceeded 155 adult SNPL individuals (Table 3-8), USFWS and CDPR determined 180 breeding adult SNPL provides a more accurate biological representation of breeding potential at ODD and thus will be the population objective for this HCP." Since there is no legal authorization for changing a recovery standard or goal as part of an HCP (rather than changing the adopted recovery plan), State Parks cannot disregard PRC § 5090 *et seq*. "OHV areas be expanded, added to, and managed to sustain areas for long-term motor vehicle recreation" along with managing to ensure the “fullest appropriate public use.” the agencies may not arbitrarily impose some different and higher "breeding potential"

  State Parks repeatedly places too great an emphasis on conservation. Within the SVRA presently, only about 16 percent of the total 5,000 acres is open to OHV recreation.

O6-45

- p. 5-5: "Habitat restoration in North and South Oso Flaco could improve nesting habitat for SNPL and may provide additional wintering habitat by creating more open beach and/or adjacent foredune areas through the removal of invasive species. With the removal of invasive species and recontouring of the dune areas, SNPL may begin to use these areas for nesting and wintering activities."

  State Parks has failed to define the “natural state.”

  State Parks has been inconsistent and arbitrary when removing invasive species and recontouring of the dune areas

O6-46

- p. 5-6: "Virtually all SNPL nests at Oceano Dunes SVRA will receive some type of fence protection (generally, only those few nests that are not discovered by monitors do not receive some type of fence protection)."

O6-47

Instead, State Parks should collect all nests in the riding area per AMM 22. O6-47

- p. 5-10: Change, "Breeding SNPL population size ≥ 180 for 3 consecutive years, including the year before the 6 Exclosure is reduced in size (SNPL Objective 1.1)." to read "Breeding SNPL population size ≥ 155 for 3 consecutive years, including the year before the 6 Exclosure is reduced in size (SNPL Objective 1.1)."

  Neither State Parks nor the USFWS is authorized to impose larger breeding goals O6-48

Map 3: there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands O6-49

- Map 3 – should be modified to depict the approximate location of "Old Competition Hill" to distinguish from the current Competition Hill O6-50

- Map 6: there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands O6-51

- Does the proposed take limit for the plover include "indirect" take caused by increased predation that results from dust control measures? O6-52

- Friends requests a better method that defines take of endangered species to reduce gross errors. Example, there are numerous deaths of WSP and CLT that happen from predator strike or even strike of objects like a fence outside of the riding area…but as soon as it occurs in the riding area the report always documents the carcass in tire tracks leading the reader to assume the death was caused by a vehicle strike with no evidence to support it. Friends requests to be involved in establishing these definitions. O6-53

<u>Comments & Corrections on the Draft Environmental Impact Report (DEIR):</u>

- Page 2-2, Table 2-1, and Notes 4 and 6 – there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

- Page 2-3 – there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands O6-54

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- Page 2-4 – there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands **O6-54**

- Page 2-29 – the official name is "Public Resource**s** Code" **O6-55**

- Fig. 2-3 – should be modified to depict the approximate location of "Old Competition Hill" to distinguish from the current Competition Hill **O6-56**

- Fig. 2-3 – Union Oil was acquired by Chevron – the figure should note that when referencing Union Oil inholdings **O6-57**

- Fig. 2-3 – there is no "leasehold" with Phillips 66; that reference needs to be corrected to reflect the precise legal status of those lands
- Page 2-6 – there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands **O6-58**

- Page 4-13 – the EIR states: "In 1983 CDPR and the County entered into an agreement allowing the State to provide "the care, maintenance, and control for the purposes of the State Vehicular Recreation Area and Trail System, of lands under the jurisdiction of Local Agency (CDPR and SLO County 1983). CDPR has operated the La Grande tract area since this agreement. Further, regarding the parcels owned by the County, the agreement authorizes the State to provide "care, maintenance, development, operation, and control of the real property …for the purposes of the State Vehicular Recreation Area and Trail System." While the agreement is in force and effect, the property is to remain accessible for the use and enjoyment of all, subject to the control of the State." It is our understanding that this agreement expired. Is that accurate?
- Page 4-30 – discussion of La Grande Tract agreement. It is our understanding that the agreement expired. Is that accurate? **O6-59**

- Fig. 5-4 – there is no "leasehold" with Phillips 66; that reference needs to be corrected to reflect the precise legal status of those lands **O6-60**

- p. 6-5 – discusses the Oceano Dunes Biodiversity Management Plan. Is there any significance in the CCC's refusal to accept this plan? **O6-61**

- Fig. 6-6 – asserts that it depicts "tertiary habitat" for the WSP and California Least Tern. But it doesn't explain what that is, or whether that is a legitimate or **O6-62**

accepted biological concept for those birds specifically. In other settings, that depiction has led to confusion among non-biologists, since such area is not normally protected habitat. The EIR appears to discuss "tertiary habitat" as areas where the birds NEVER or almost NEVER nest. If that is the case, what is the value of identifying such areas? Is there any scientific literature supporting such a designation if the birds essentially never nest there? If the birds NEVER or almost NEVER nest there, isn't more of a fluke or aberration rather than viable habitat? "Tertiary habitat" is not protected under federal or state law and it serves no purpose to identify such areas. It is not part of any critical habitat area. O6-62

- Fig. 7-1 – does not appear to show the CA-50 boneyard exclosure reduction O6-63

- Table 8-3 – the number of acres asserted to be open for OHV riding is inconsistent within the EIR and between the EIR and the HCP and between the EIR and the Oceano Dunes SVRA soil conservation plan O6-64

- Table 8-3 – there is no "leasehold" with Phillips 66; that reference needs to be corrected to reflect the precise legal status of those lands O6-65

- Footnote 48 – it is unclear what the phrase "have jurisdiction over the Coastal Act" means. It is more accurate to say that the County and the CCC "administer" the Coastal Act. Better yet, footnote 48 seems unnecessary and should be deleted. O6-66

<u>Comments & Corrections to DEIR Appendices:</u>

- Map 2 – there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands O6-67

Comments on Draft EA

- Fig. 3 – there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

- Fig. 3 – should be modified to depict the approximate location of "Old Competition Hill" to distinguish from the current Competition Hill O6-68

- Fig. 6 – there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

- Fig. 11 – there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

- Tabel C-1 – there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

- p. C-20 – there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

- Table C-3 – there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

- Table C-5 – there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

- p. D-100 – there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

- p. D-125 – there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

- p. D-126 – there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

- p. D-128 – there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

- p. D-142 – there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

- p. D-154 – there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

- p. E-28 – there is no "leasehold" with Phillips 66; that statement needs to be corrected to reflect the precise legal status of those lands

- p. F-13: what is the impact on the NEPA analysis now that the CEQ regulations have been withdrawn?

O6-68

Friends seeks to protect **Access For All** while ensuring a **No Net Loss** management of the Oceano Dunes SVRA.

O6-69

Sincerely,



Jim Suty
President – Friends of Oceano Dunes

cc: Tom Roth
Tim Kassouni
Friends' Board of Directors

Friends of Oceano Dunes is a 501(c)(3) California not-for-profit corporation. Friends represents environmentalists, equestrians, campers, fishermen, families and off-road enthusiasts who enjoy the benefits of public access through responsible recreation at the Oceano Dunes State Vehicular Recreation Area (ODSVRA). Friends seeks to maintain Access For All!

O7 Motorcycle Industry Council

January 23, 2026

Mr. Ronnie Glick, Senior Environmental Scientist,
California Department Parks and Recreation
Oceano Dunes District
340 James Way, Ste. 270
Pismo Beach, CA 93449.

RE: Comments on the Recirculated Draft EIR

Dear Mr. Glick,

On behalf of the Motorcycle Industry Council[1] (MIC), Specialty Vehicle Institute of America[2] (SVIA), and Recreational Off-Highway Vehicle Association[3] (ROHVA) – together referenced as the Associations - thank you for the opportunity to provide comments on the California Department of Parks and Recreation (DPR), Oceano Dunes District Habitat Conservation Plan (HCP) Recirculated Draft EIR.

The Associations have a long-standing interest in the protection of the values and natural resources found within the planning area and regularly work with land managers to provide recreation opportunities, preserve resources, and promote cooperation among public land visitors. The Associations also prioritize educating their members and the public about responsible off-highway vehicle (OHV) recreation, including on-line and in-person training.

[1] The Motorcycle Industry Council (MIC) is a not-for-profit, national trade association representing several hundred manufacturers, distributors, dealers and retailers of motorcycles, scooters, motorcycle parts, accessories and related goods, and allied trades.

[2] The Specialty Vehicle Institute of America (SVIA) is the national not-for-profit trade association representing manufacturers, dealers, and distributors of all-terrain vehicles (ATVs) in the United States. SVIA's primary goal is to promote safe and responsible use of ATVs.

[3] The Recreational Off-Highway Vehicle Association (ROHVA) is a national, not-for-profit trade association formed to promote the safe and responsible use of recreational off-highway vehicles (ROVs – sometimes referred to as side-by-sides or UTVs) manufactured or distributed in North America. ROHVA is also accredited by the American National Standards Institute (ANSI) to serve as the Standards Developing Organization for ROVs. More information on the standard can be found at https://rohva.org/ansi-standard/

The popularity and value of recreation at Oceano Dunes State Vehicular Recreation Area (SVRA) cannot be denied. Fresno State University's recently published economic study - https://ohv.parks.ca.gov/?page_id=26656 - showed recreational users in Oceano Dunes SVRA: Generated over $379 million in economic output in the state, supported over 2,600 jobs, and generated over $63 million in tax revenues, including over $32.8 million in state and county tax revenues ($18 million in state tax revenue and $14.8 million in county tax revenue).

> OHMVR DIVISION WEBSITE: *The Mission of the Off-Highway Motor Vehicle Recreation (OHMVR) Division is to provide leadership statewide in the area of off-highway vehicle (OHV) recreation; to acquire, develop, and operate state-owned vehicular recreation areas; and to otherwise provide for a statewide system of managed OHV recreational opportunities through funding to other public agencies.*
>
> *The OHMVR Division works to ensure quality recreational opportunities remain available (including Oceano Dunes SVRA) for future generations by providing for education, conservation, and enforcement efforts that balance OHV recreation impacts with programs that conserve and protect cultural and natural resources.*

O7-1

The OHMVR Act of 2003 (Public Resources Code § 5090.01 et seq.) provides DPR's mandate for off-highway vehicle (OHV) recreation as highlighted above in the Mission Statement. In addition, the OHMVR Division is responsible for management, maintenance, administration, and operation of lands within SVRAs (including Oceano Dunes) (Pub. Res. Code § 5090.32, (b)Management, maintenance, administration, and operation of lands in the state vehicular recreation areas and (g) Prepare and implement management and wildlife habitat protection plans for lands in, or proposed to be included in, state vehicular recreation areas, including new state vehicular recreation areas.

The Associations believe the Oceano Dunes District (District) HCP provides a framework for promoting the protection and recovery of natural resources, including endangered species and provides the rationale for applying for an approval for an Incidental Take Permit (ITP) from the U.S. Fish and Wildlife Service (FWS). The HCP will protect, enhance, and restore natural resources in Pismo State Beach and Oceano Dunes SVRAs and contribute to the recovery of listed species. Rather than separately permitting and mitigating individual activities, the HCP evaluates natural-resource impacts and mitigation requirements comprehensively in a way that is more efficient and effective for at-risk species and their essential habitats.

O7-2

The Associations support the HCP's strategies of avoid, minimize, mitigate, and adaptive management to address OHV and other outdoor recreation impacts to listed species that also ensure long-term access to the unit for current and future generations of motorized dune enthusiasts.

O7-3

**RECOMMENDATION**

The Associations are proud to support both the Draft HCP and issuance of the Incidental Take Permit by the FWS. We commend the Division's planning team for crafting a document that protects critical wildlife habitat and provides continued access to the SVRAs for environmentally responsible OHV recreation. O7-4

Sincerely,

*Don Amador*

Don Amador
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OCEANO BEACH
COMMUNITY ASSOCIATION

January 20, 2026

U.S. Fish and Wildlife Service
Re: Draft Habitat Conservation Plan 2025 (HCP) Oceano Dunes District

To Whom It May Concern:

The Oceano Beach Community Association (OBCA) appreciates the opportunity to comment on the draft Habitat Conservation Plan (HCP). While the OBCA maintains broad concerns regarding the scope of the plan, this letter focuses specifically on two critical areas where the HCP fails to meet conservation mandates: the ongoing negative impacts of vehicle crossings at Arroyo Grande Creek and the ecologically damaging practice of mechanical beach grooming.

## I. Arroyo Grande Creek: Enforcement Deficiencies and Species Risk

While the draft HCP acknowledges the presence of federally protected and threatened species—including the Tidewater Goby and Steelhead—it fails to provide meaningful protection or enforcement mechanisms. O8-1

**1. Disparate Restoration Standards:** California State Parks has championed the restoration of Malibu Creek, yet this HCP ignores similar opportunities for Arroyo Grande Creek. Instead, the plan continues to permit thousands of vehicle crossings that result in documented pollution and significant alterations to the stream bed and bank. State Parks records indicate only 11 crossing violations in the last five years—a figure that suggests a profound failure in monitoring rather than a lack of occurrence. O8-2

**2. Public Safety and Enforcement Failures:** The dangers of unrestricted access were underscored in December 2023, when vehicles were stranded during high-water conditions, requiring emergency rescues of adults and children.

- **Video Evidence:** As documented in this footage, the current "signage-only" approach is a failure.
- **Lack of Intervention:** Further evidence available here shows numerous vehicles crossing during hazardous conditions while State Parks rangers observe without intervening.

A conservation plan without active enforcement is merely a statement of intent, not a management tool. O8-3

**3. Regulatory Compliance:** Continued vehicle crossings violate the core principles of habitat preservation and likely run afoul of Fish and Game Code Section 5650. Allowing vehicles to transit through active habitats of federally protected species as recently as 2023 is inconsistent with the goals of an HCP. O8-4

## II. Mechanical Trash Removal and "Grooming"

The DEIR and HCP propose mechanical trash removal (raking/grooming) from Grande Avenue south to Post 6. The OBCA strongly opposes this practice for the following reasons:

**1. Mischaracterization of Activity:** The terms “raking” and “grooming” are misleading. In practice, this involves massive earth-moving equipment shifting tons of sand across numerous acres. This is an industrial activity, not a cosmetic cleanup. O8-5

**2. Ecological Degradation:** Scientific consensus indicates that mechanical grooming destroys the beach ecosystem by:

- **Depleting Invertebrates:** Grooming alters the composition and reduces the availability of invertebrates, which are a primary food source for migrating, overwintering, and nesting bird species.
- **Disrupting the Food Web:** By removing organic "wrack" and the life it supports, the area’s utility as a migratory corridor is severely diminished.
- **Habitat Loss for SNPL:** Mechanical activity causes permanent changes to dune composition, reducing potential nesting habitat for the Snowy Plover (SNPL) and potentially precluding these birds from using the area entirely.
- Increased dust emissions.

O8-6

## III. Proposed Recommendations

To align the HCP with federal conservation mandates and ensure public safety, the OBCA urges State Parks to implement the following:

1. **Prohibit Vehicle Access South of Pier Avenue** whenever Arroyo Grande Creek is flowing. This is the only effective measure to prevent habitat destruction.
2. **Discontinue Mechanical “Grooming”.** To preserve the integrity of the invertebrate population and the avian food web.
3. **Prioritize Enforcement.** Shift from passive observation to active enforcement of existing and new environmental protections.

O8-7

Beyond our immediate Oceano area we have the following concern:

1) The court recently found that State Parks is violating the Endangered Species Act by allowing vehicle use that results in “take” of Western Snowy Plovers. Therefore, the draft HCP **should include a “no vehicles alternative”** that would comply with this decision. O8-8

The OBCA exhorts the Off-Highway Motor Vehicle Recreation (OHMVR) Division to prioritize habitat preservation over recreational convenience. We look forward to seeing these necessary changes reflected in the final Habitat Conservation Plan.

O8-8

Respectfully,

Bonita Ernst, President

Lucia Casalinuovo, Secretary

Allene Villa, Treasurer

Oceano Beach Community Association, oceanobeachca@gmail.com




December 1, 2024 - Pismo State Beach, Arroyo Grande Creek Credit: Bonita Ernst

SIERRA CLUB
SANTA LUCIA

January 23, 2026

Mr. Ronnie Glick
Senior Environmental Scientist,
California Department of Parks and Recreation, Oceano Dunes District
340 James Way, Ste. 270, Pismo Beach, CA 93449
Submitted to comment@oceanoduneshcp.com

USFWS
Public Comments Processing; Attn: Docket No. FWS-R8-ES-2025-0143
U.S. Fish and Wildlife Service; MS: PRB/3W
5275 Leesburg Pike, Falls Church, VA 22041-3803.
Submitted via https://www.regulations.gov/commenton/FWS-R8-ES-2025-0143-0001

RE: Comments on the State Parks ODSVRA Recirculated Draft EIR and updated Draft HCP and USFWS Docket No. FWS-R8-ES-2025-0143 Take Permit and Recirculated Draft Environmental Assessment (EA) - January 2026

Dear Mr. Glick,

On behalf of the Santa Lucia Chapter of the Sierra Club, representing over 4,000 Sierra Club members and supporters in San Luis Obispo County (SLO), we offer the following comments regarding the Oceano Dunes State Vehicular Recreation Area (ODSVRA) recirculated Draft Environmental Impact Report (DEIR), Draft Environmental Assessment (DEA) and updated Habitat Conservation Plan (HCP). As they stand, the recirculated DEIR, DEA and updated HCP are insufficient to meet the requirements of the Endangered Species Act (ESA) and California Environmental Quality Act (CEQA) and require significant revisions prior to being finalized.

The following comments address the recirculated DEIR, DEA and updated HCP. Some sections contain specific feedback on certain documents, but the comments as a whole are relevant to issues common to all three documents and should be considered in both the state and federal comment periods.

Attached are the Dunes Alliance's (including the Sierra Club and other non-governmental organizations) previously submitted comments for the 2020 HCP, which should remain on the record in the analysis of the 2025 Draft HCP, EIR and EA.

The California Department of Parks and Recreation (DPR) has been in violation of the Endangered Species Act (ESA) every year that it has allowed off-road vehicles to operate in the habitat of federally protected species within the Oceano Dunes State Vehicular Recreation Area (ODSVRA) without a Habitat Conservation Plan (HCP) and a federal take permit for impacted species. The Sierra Club sued State Parks in 2001 (*Sierra Club v. Areias*) for violating the ESA and putting the western snowy plover, California least tern, and South Central Coast steelhead at risk in its management of the dunes. A Habitat Conservation Plan was required in the settlement agreement with the Sierra Club in 2004. Sixteen years after that settlement

agreement was signed, State Parks produced their 2020 Draft Habitat Conservation Plan that proposed to expand off-road activity into areas of the park that were closed to vehicles for the protection of ESA-listed species.

The 2020 Draft HCP (much like the 2025 Draft HCP) prioritized off-road recreation over the protection of wildlife; failed to address longstanding areas of concern in park management and implement solutions urged by the US Fish and Wildlife Service (USFWS) and the California Coastal Commission (CCC); and proposed opening 109 additional acres of sensitive dunes habitat to off-road vehicles. The 2020 Draft HCP remained on hold until the present 2025 Draft HCP. With the new Draft HCP, DPR is again seeking to use a Habitat Conservation Plan to reduce protected habitat, thereby increasing the take of listed species and reducing the chances of their recovery.

**The project objectives are designed to thwart the purpose of an HCP and the Endangered Species Act.**

The resubmitted DEIR cites the following project objectives (2.3.2): “Preserve, manage, and expand, as appropriate, motorized and non-motorized recreational opportunities” and “Manage, maintain, and maximize, as appropriate, access to the unique coastal camping and recreational amenities in the HCP area.”

Per the National Oceanic and Atmospheric Administration (NOAA), an HCP is “a planning document that outlines how a particular non-federal entity will minimize and mitigate for the incidental take of listed species while carrying out their specific activity.” The Draft EIR/EA’s ostensible “project objectives” cited above are simply a description of the daily operations of the ODSVRA – “their specific activity.” These two particular objectives from 2.3.2 are more suitable for the project description, since they outline the “specific activity” that the HCP should be minimizing and mitigating – the sole goal of every HCP.

The Draft HCP’s stated purpose is “to describe the measures the Oceano Dunes District will undertake to avoid, minimize, and mitigate specified visitor- and park operations-related impacts to several listed species” (2.3.1). However, this purpose is described as a “primary” purpose in the Draft EIR, implying that an HCP can have more than one purpose – despite its defined sole purpose per NOAA. When DPR introduces additional purposes that are not aligned with the ESA, this results in project objectives that are recast as purposes not contemplated by the ESA. DPR is proposing to “expand” and “maximize” the activities which already constitute the “visitor- and park operations-related impacts” to listed species. O9-1

The inappropriate project objectives are recited throughout the Draft EA and EIR as the pretext for the rejection of many key project alternatives. The Final EA/EIR should eliminate these particular project objectives because they are antithetical to the actual purpose of a Habitat Conservation Plan and ESA Section 10.

The Draft HCP and EIR/EA contend that impacts to motorized vehicular recreational activity are equivalent to environmental impacts. This fundamental distortion of state and federal

environmental law infects the entirety of the Draft Habitat Conservation Plan for the Oceano Dunes District and the Draft recirculated Environmental Impact Report and Environmental Assessment, as detailed below. The final EA/EIR should remove this premise and all conclusions that are based on the faulty premise that the provisions for the expansion of motorized vehicle recreation can be prioritized at a level equal to or greater than the measures required to ensure the survival of ESA-listed species.

O9-1

**The thresholds of significance are designed to thwart the purpose of an HCP and the Endangered Species Act.**

The contention that impacts to recreational vehicular activity can be considered environmental impacts carries over to the DEIR 8.3.1 Thresholds of Significance. There the DEIR states, "Based on CEQA Guidelines Appendix G, the HCP would have a significant environmental impact related to recreation and public access if it would:

- Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated, or

- Include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse effect on the environment.

*In addition, CDPR has determined the project would have a significant environmental impact related to recreation and public access in the project area if it would:*

- *Substantially limit, reduce, or interfere with established coastal recreational opportunities or public access*." [Emphasis added]

O9-2

The first two categories of projects, which are present in the CEQA checklist, do not apply to any of the proposed measures in the HCP. But the third bullet point is a checklist addition that has been invented entirely by DPR. The CEQA guidelines do state that the Threshold of Significance checklist "may be tailored to satisfy individual agencies' needs and project circumstances." Given an inch, DPR has taken a mile and created this entirely new threshold of significance that is not aligned with the intent of the CEQA checklist. Hence, CEQA's examples of actions involving "recreational facilities which might have an adverse effect on the environment" morph into the Draft EIR's vague "environmental impact related to recreation," and the law protecting the environment is reinterpreted as a law protecting an environmentally destructive recreational activity. This reinterpretation is echoed throughout the documents, including in the recirculated Draft EA at 8.2, purporting to assess "environmental consequences" to recreation.

This is not the first time DPR has floated this hopeful addition to state and federal environmental law via a unique interpretation of the CEQA checklist pertaining to the EIR. In 2016, DPR produced a Program EIR for the ODSVRA Dust Control Program that purported to find an "impact" in the fact that the dust control project would not "perpetuate and enhance recreational

use of OHVs in the ODSVRA" and attempted to shift the focus from potential environmental impacts under CEQA to alleged conflicts with the ODSVRA General Development Plan.

In response, the SLO County Air Pollution Control District (APCD) noted DPR's novel interpretation of CEQA in declaring that a dust control project would have "a significant environmental impact related to recreation" because it would reduce the size of the riding area. The APCD commented that DPR was attempting the "creation of their own significance threshold for impacts to recreation that is found only in this document and goes beyond what is defined in the CEQA guidelines." O9-2

Then as now, DPR is attempting to stand the ESA and CEQA on their heads to pretend that off-road recreation is an activity that merits environmental protection.

**The Draft EIR/EA's proposed reduction of exclosures will increase harms to protected species.**

The Draft EIR/EA notes that the proposed reduction of the seasonal exclosures at the Boneyard and Post 6 would inevitably expose plovers to harm. It proposes the following solution to this problem: Any adult or juvenile plovers "found outside an exclosure would typically be expected to fly out of harm's way," a statement that raises the concern that State Parks does not understand the reason for the court's ruling that it is violating the Endangered Species Act. As the 6 exclosure's northern boundary is reduced, most nesting plovers "are expected to move south into the protection of the exclosure to avoid disturbance from recreation activity." And if they don't, park personnel will scoop up wayward chicks and carry them to the safety of captivity. This is an endorsement of harassment, prohibited by the Endangered Species Act, proposed as a conservation measure. The Draft EIR is aware of this, acknowledging that "the capture itself is a form of take that could result in take above baseline conditions since it would be used in lieu of protecting nests or moving chicks back to the safety of the seasonal exclosure." O9-3

We note the contrast with US Fish and Wildlife Service notice 2025-20724 (90 FR 52993) stating that mitigation for unavoidable take would be accomplished "through meeting the biological goals and objectives outlined in the HCP. The [ODSVRA] conservation program is designed to protect and promote recovery of covered species, including managing habitat components to benefit covered species, minimizing human alteration or disturbance of native habitats, reducing conflicts between covered species and park users, restoring native habitats," etc. The proposed reduction of exclosures and the proposed mitigation for that reduction undermine those goals and objectives.

The DEIR asserts, "The Consent Decree signed by Sierra Club and CDPR… stipulates that the CDPR HCP application to the USFWS would support a northern boundary of the seasonal exclosure at Post 7. This alternative conflicts with the Consent Decree by maintaining the northern boundary of the seasonal exclosure at Post 6 and thus does not achieve the project objective of facilitating implementation of legal settlement conditions and obligations."

This is a reference to the first time DPR was legally compelled to comply with the Endangered Species Act at Oceano Dunes in 2004. Now that the DPR has expressed their "support [for] a northern boundary of the seasonal exclosure at Post 7" in the Draft HCP, that clause in the Consent Decree has been satisfied. Their support for this alternative is now on the record in their ITP application, but DPR and USFWS are under no legal obligation to continue this support should the alternative be found impermissible under ESA and CEQA. The lead agencies may now return to the other "provisions notwithstanding" of the Consent Decree and facilitate the implementation of all other legal settlement conditions and obligations. The Final EA/EIR should not eliminate protected habitat on the grounds that "reducing or eventually eliminating the 6 Exclosure ensures CDPR can better meet the recreational needs of the public under the HCP as proposed." Per our Consent Decree, DPR can propose the shrinking of the exclosure to Post 7. Contrary to DPR's belief, the Consent Decree and DPR's preference are not binding on USFWS.

O9-3

**The Draft EIR/EA alternatives analysis proposes an inadequate range of alternatives and rejects the alternative most likely to reduce the take of protected species.**

The proposed "Environmentally Superior Alternative" does not sufficiently avoid, minimize, or mitigate the take of ESA-listed species; does not provide an alternative to the reduction/elimination of endangered species habitat; and can only be considered superior due to the rejection and omission of the truly environmentally superior alternative.

The currently proposed inadequate "Environmentally Superior Alternative" outlined in the DEIS 9.3, would include "opening the 6 Exclosure to year round riding,"

The Draft EIR/EA should reevaluate and classify as the Environmentally Superior Alternative the alternative previously rejected in the 2020 HCP process: eliminating OHV use over a transition period; allowing vehicular access/camping on the beach in the area between West Grand Avenue and Pier Avenue and closing the Pier Avenue entrance in Oceano; terminating vehicle crossings of Arroyo Grande Creek; and abandoning the plans for a southern entrance, in order to protect natural resources and sensitive species in the dunes, Arroyo Grande Creek, and Oso Flaco Lake. This would meet the DEIR's criteria of project objectives for "operating the covered park units in a manner that provides for public use and enjoyment while conserving park resources."

O9-4

The DEIR rejects the Permanent Year-Round Exclosures Alternative (9.2.3) because it would "in a best-case scenario, create no net loss of recreation, but if CDPR could not identify replacement riding and camping acreage, could combine with the Dust Control Program recreation reduction to create a significant and unavoidable cumulative loss of recreation opportunity." Rather than afford this protection for endangered species and their habitat, the Draft EIR prioritizes "preserving, managing, and expanding, as appropriate, motorized and non-motorized recreational access. The Permanent Year-Round Exclosures Alternative is rejected in favor of the proposed HCP." The DEIR here borrows terms of art ("significant and unavoidable," "cumulative loss") to again conflate impacts to recreation with impacts to the

environment and to create the impression that it is citing legal statutes. It is not. See above comments on Project Objectives and Thresholds of Significance.

In the DEIR section 9.2.4 Alternative 4: Reduced Vehicle Use Limits, the DEIR acknowledges that under this alternative, "The potential for SNPL and CLTE take during the breeding season could be reduced somewhat but not eliminated," but then states that this "does not substantially reduce environmental impacts of increased risk of take of SNPL and CLTE." The Final EIR should include substantiation and quantification of the terms "somewhat" and "substantially."

The Draft EIR/EA's rejection of alternatives is based on the claim that "The proposed HCP fully achieves project objectives of promoting species and habitat conservation, ensuring FESA compliance, and avoiding, minimizing, and mitigating take effects." However, this statement contrasts with DPR's request for a permit for an annual take of 16 plovers, despite having never reported a take of more than 10 plovers in any year. After implementing the measures in the Habitat Conservation Plan, and its conflicting goal of maximizing and expanding OHV recreation, DPR is projecting an *increase* in the take of listed species at the Oceano Dunes. It is unclear how the HCP can "fully achieve [the] project objectives of promoting species and habitat conservation, ensuring FESA compliance, and avoiding, minimizing, and mitigating take effects" while proposing an increased take. O9-4

Table 9.2, under "Air Quality," states that under Alternative 2 "Reduction of the 6 Exclosure and Boneyard Exclosure would not occur and no increase in PM 10 emissions from year-round OHV recreation in these areas would occur." Under "Biological Resources" in the same table, Alternative 2 is characterized as "Exclosure reduction (CA-50) would occur in Boneyard Exclosure only. Existing recreational opportunities would be expanded from seasonal access (Oct–Feb) to year-round access in East Boneyard (47 acres)." The final EA/EIR needs to clarify where exclosure reduction and increased PM 10 emissions would or would not occur under this alternative.

**The Draft EIR omits and does not estimate the likely take resulting from projects in the Public Works Plan and DPR's current plan for a southern entrance to the ODSVRA.**

The 2020 Draft HCP included the Public Works Plan (PWP) project of opening 40 acres of tertiary SNPL habitat near Oso Flaco Lake to off-road activity. The 2025 Draft EIR states that "The EIR impact analysis is limited in scope to the environmental assessment of new activities proposed by CDPR under the HCP (Table 2-4) that would result in a physical change to the environment." PWP projects are absent from the recirculated Draft.

The Draft PWP resembled the current HCP and Draft EIR/EA in that it constituted a blueprint to expand impacts to coastal resources by increasing off-road vehicle activity in the Oceano Dunes. Per the Coastal Commission staff report for the 3/18/21 CDP review hearing, "the Draft PWP envisions multiple hundreds of camping and RV spaces (including cabins), multiple new entrances for OHVs to access the current riding area (through untouched and currently off-limits dune ESHA and other ESHA areas), additional new area for OHV use (e.g., new staging areas, pump tracks, training areas, lighted activity areas, etc.), and related development (including O9-5

rental/concessionaire space, an OHV historic museum, weapons range, State Parks staff housing, etc."

The 2025 DEIR characterizes this history as follows: "The Draft PWP included tentative park improvement projects and was initially reviewed by the Coastal Commission. The PWP process is presently on hold and CDPR has no current plans to move the Draft PWP forward. Given the stalled process, several of the PWP projects are no longer reasonably foreseeable and are not considered in the cumulative impact discussion" (3.3.3). The DEIR also states that "The HCP anticipates that some of the projects envisioned in the PWP may be implemented during the HCP term. Some of those projects may require amendments to the HCP, whereas others could be incorporated without amendment" (S.5.10).

The Draft HCP under review is a recirculated draft of the 2020 HCP. It, too, was once "on hold," but no longer is. The level of vagueness in terms like "presently on hold" and "no current plans," along with the simultaneous admission that "some" portions of the PWP may be implemented, suggests that DPR is engaged in piecemealing, seeking to omit the impacts of likely PWP projects from the HCP in an impermissible attempt to escape environmental review and an assessment of cumulative impacts. This is of particular concern considering the nature of the "tentative park improvement projects" in the Draft PWP and its history as cited above.

As recently as April 2025, DPR expressed its interest to the San Luis Obispo County Board of Supervisors in accepting an offer to dedicate an access easement and acquire a "buffer zone" adjacent to the Phillips 66 refinery for the specific purpose of creating a southern entrance into the ODSVRA. The letter affirmed that: O9-5

> "State Parks is vitally interested in acquiring the Buffer Zone to expand recreational opportunities…and provide a southern access route…. To this end, we have commenced our due diligence review. If the County is considering widening the OTD for the access easement to 50' in width, State Parks is interested in accepting it as well. A larger access route would provide more value and opportunities for Oceano Dunes SVRA…. The General Plan for Oceano Dunes SVRA identifies the Buffer Zone as the means of providing a southern access into the Ocean Dunes SVRA as well as detailing campgrounds and other recreational amenities for the public…. We wish to ensure that the Board is aware of State Parks' decided interest and aspiration to own the Buffer Zone so that we may ensure expanded and consolidated management of the property for the benefit of the local community and state. If the Buffer Zone is a subject of a permit condition or is proposed for sale, State Parks would deeply appreciate County's support for the Buffer Zone moving into State ownership." (4/18/25 letter to San Luis Obispo County Board of Supervisors from Alexandra Stehl, Deputy Director, Strategic Planning and Recreation Services Division, CA Dept. of Parks and Recreation.)

It is reasonable to assume that DPR intends to implement the projects of the PWP by any other name, whether in a Public Works Plan in 2020 or as "other recreational amenities" asserted in 2025, and those projects are not "on hold," are reasonably foreseeable, and an analysis of their potential cumulative impacts and mitigation, including the likely decimation and extinction of the

world's only stands of Nipomo Mesa Lupine, which are within or immediately adjacent to the path of the proposed southern entrance. The Final EIR/EA needs to state which "PWP projects are no longer reasonably foreseeable," which "projects envisioned in the PWP may be implemented during the HCP term," and which "recreational amenities" via a southern entrance DPR has planned, pending acceptance of an offer to dedicate and ownership of the Buffer Zone, and include them in its analysis of cumulative impacts. O9-5

**The Draft HCP and Draft EIR/EA exclude consideration of South Central Coast steelhead.**

The Draft HCP and DEIS state, "Steelhead (Oncorhynchus mykiss irideus; South-Central California Coast Ecologically Significant Unit) is not proposed for coverage per letter from NOAA Fisheries (NOAA Fisheries 2008) concluding that covered activities are not likely to take steelhead with the implementation of avoidance and minimization measures (AMMs)." However, the 2008 letter from NOAA appears to only take into consideration the mouth of Arroyo Grande Creek and does not appear to address potential impacts to the lagoons adjacent to Arroyo Grande Creek, which serve as steelhead rearing habitat.

Additionally, "In an email to DPR dated December 16, 2016, NOAA Fisheries informed DPR of a desire to revisit NOAA's 2008 letter regarding take of Steelhead trout, and discuss the possibility of incorporating seasonally-specific minimization measures for vehicle crossing of the Arroyo Grande Creek during times when the creek breaches the sandbar and flows to the ocean, a time when steelhead are more likely to be using the creek while vehicles are still allowed to cross the creek" (Coastal Commission, January 2017). These updates indicate that there have been significant impacts from Arroyo Grande Creek vehicular crossings and that NOAA's 2008 letter is worthy of revisiting, especially when the creek and/or steelhead circumstances change.

The letter and Draft HCP/EIR/EA also do not take into consideration the changing conditions at Arroyo Grande Creek and intentional efforts to improve the creek's South Central Coast steelhead habitat and recovery efforts. The flow cadence of Arroyo Grande Creek has recently experienced significant change due to the Lopez Dam litigation's 2025 Preliminary Injunction, which doubled the water released from Lopez Dam in 2025 (~7-8cfs) compared to the interim downstream release schedule (IDRS) of around ~4cfs. Lopez Dam recently switched back to the IDRS and lowered the releases by around 0.5cfs/day until they got back to ~4cfs. The ultimate downstream release schedule is still being determined depending on the litigation outcome. However, the changes in flow that occurred in 2025 should be considered significant compared to the conditions in the 2008 assessment and warrant re-analysis of the condition and behavior of steelhead in Arroyo Grande Creek. Additionally, the potential for and likelihood of increased Arroyo Grande Creek flow in the near future should be considered and planned for as it is intended to improve steelhead habitat and recovery efforts in Arroyo Grande Creek. O9-6

It should also be noted that there is documented evidence of vehicles driving through Arroyo Grande Creek during high water flows at a depth when steelhead and goby could be present, despite the implementation of AMMs and State Parks staff present, as documented in the public comment portion of the January 13, 2026, Draft HCP and Recirculated Draft EIR Public Workshop. As long as vehicle crossings of Arroyo Grande Creek are permitted, violations of the

permit condition will continue to occur. Based on this reality, the Draft HCP, EIR and EA should analyze the impacts of such activities on steelhead and tide water goby. O9-6

**The Draft HCP and DEIR do not identify a funding source for the dune stabilization program or the HCP measures overall.**

The habitat restoration program to stabilize the dunes has lost funding in recent years. A funding source must be specified to meet the requirements for a Habitat Conservation Plan. The HCP and EIR/EA should also describe how this program is focused on habitat quality and acreage restored.

DPR's promise to search for the funding necessary to carry out the programs of the HCP for a full 25 years (CDPR Public Comment Meeting HCP Oceano Dunes, 1/13/26) does not constitute a guarantee that annual funding for the 25-year period of the HCP will be available to administer, monitor, and protect the listed species, contrary to the HCP funding requirement stipulated in the ESA. O9-7

In the face of uncertain commitment of funding to fulfill the HCP for a full 25 years (CDPS Public Comment HCP Oceano Dunes 1/13/2026), permanent exclosures for Plover and Least Tern, would markedly reduce annual mitigation and monitoring costs and result in better outcomes for species.

**DPR's history of species management argues against allowing expansion of off-road vehicle use in the HCP.**

In 2016, USFWS warned DPR that it was in violation of the Endangered Species Act for allowing the harassment and killing of snowy plovers at Oceano Dunes without authorization. At Oceano Dunes from 2016 to 2019, an average of four to six snowy plovers were found dead each year, most flattened in vehicle tracks. USFWS recommended measures to avoid future plover deaths, including *decreasing vehicle numbers, prohibiting night riding, and making seasonal fencing protecting plover nesting habitat permanent.* USFWS and DPR now dismiss these measures in the Draft HCP and EIR/EA.

In the summer of 2020, snowy plovers expanded their nesting and foraging areas while the beach was closed to vehicles in late March by the COVID-19 crisis. The Center for Biological Diversity documented State Parks staff illegally interfering with nesting of snowy plovers in former off-road riding areas at Oceano Dunes. The California Coastal Commission issued a cease and desist order prohibiting any further violations, specifically "beach grading/grooming and grading in the dunes with bulldozers and other heavy equipment; placement of stakes with mylar ribbons to deter Western snowy plover nesting activities; moving or directing nesting plovers or broods; "scuffing out" plover nesting scrapes; and placement of fences, posts, stakes etc. in areas occupied by nesting plovers." The Coastal Commission noted that the order was necessary "in order to: (1) protect Western snowy plover and California least tern nesting habitat, which constitutes environmentally sensitive habitat area (ESHA); (2) mitigate for impacts to nesting plover habitat resulting from unpermitted activities that have already taken place; (3) ensure consistency with the requirements of CDP 4-82-300, as amended, and as it has been O9-8

implemented to protect plovers and terns, including their nesting habitat; and (4) pursuant to PRC Section 30809(c), avoid irreparable injury to the Subject Property, including the aforementioned ESHA, pending action by the Commission under PRC Section 30810."

Even though the COVID-19 pandemic resulted in the closure of the ODSVRA to vehicles, DPR continued to prioritize vehicular recreation over species and habitat protection and actively sought to prevent the natural expansion of plover nesting areas – harassing the birds and causing take to keep the plovers from increasing their population, a direct violation of both the letter and intent of the Endangered Species Act. O9-8

This incident, perhaps more than any other in the history of DPR's management at the ODSVRA, illustrates the fundamental incompatibility of driving off-road vehicles on the beach and enforcing the laws created to ensure the protection of wildlife and the environment.

**Internal conflicts in the HCP's Natural Resources Management Program should be removed.**

Spreading non-native seed like sea rocket should not be part of the management plan, especially considering that the outlined modification efforts claim the need to remove it. The HCP states "Although sea rocket is non-native, the annual plant is not invasive in the HCP area and is beneficial as to improved nesting habitat because, like other native foredune plants, it grows quickly during one nesting season.Seed and container plant collection and dispersal is conducted by hand using hand tools" (2-24). DPR should provide evidence of the non-invasive character of sea rocket. Whether or not sea rocket is classified as invasive, the impacts caused by its removal utilizing heavy equipment (DEIR, 2-13) depict a management program in conflict with itself.

Per the HCP:

> "CDPR anticipates needing to remove during the non-breeding season the non-native sea rocket and larger dune hummocks in heavily vegetated areas where nesting has reduced in the Southern Exclosure. The intent of the vegetation removal would be to mimic the natural action of creek and river mouths, which can clear out acres of vegetation in one storm event to create "blow-out" areas within the foredune habitat, extremes for which foredune habitats are adapted." (2-24) O9-9

There is no creek or river mouth in the Southern Exclosure. It appears that the restoration program does not use native reference sites, historic or otherwise, to guide the program. The use of the term "restoration" for these habitat manipulation activities should be in accordance with national and international standards. See the Society for Ecological Restoration's Principles (Gann, et al). The fact that vehicle recreation forces the manipulation and maintenance of SNPL habitat in ways that appear to be at odds with the integrity of foredune development is untenable. As the impact of vehicular recreation makes this form of habitat modification necessary, it should not be rationalized as if it is part of natural dune succession.

We remind DPR that the California Environmental Quality Act is not the California Recreational Quality Act, and that the purpose of the Endangered Species Act is the protection and recovery of imperiled species, not to reduce their habitat for the expansion of off-road activity. Nor can that intention serve as the basis for securing a permit that is supposed to assist in the recovery of species imperiled by the activity that DPR intends to maximize and expand. O9-10

Thank you for this opportunity to comment,

SIERRA CLUB
SANTA LUCIA

Ranel Porter
Chair
Sierra Club, Santa Lucia Chapter
Sierraclub8@gmail.com
P.O. Box 15755, San Luis Obispo, CA 93406

DUNES ALLIANCE

December 21, 2020

To: fw8oceanoduneshcp@fws.gov

Re: Ocean Dunes District Habitat Conservation Plan (HCP)

The Dunes Alliance is a coalition of community and environmental organizations active on the California Central Coast and dedicated to the safe and environmentally sustainable use and enjoyment of the Guadalupe-Nipomo Dunes Complex. We submit the following comments on the unapprovable HCP.

The draft reads not like a Habitat Conservation Plan, but like an Off-roading Protection Plan. The Endangered Species Act (ESA) requires higher priority for conservation than recreation — immediately. However, PRC § 5090.01 et seq., including § 5090.43(a), only requires "the improvement of natural resource values over time". For over 40 years, governmental agencies have chosen to ignore the impacts of vehicular recreation at Oceano Dunes while the California Department of Parks and Recreation (CDPR) operates in daily violation of the California and Federal Endangered Species Acts and promises to come into compliance *over time* or when they feel it's *appropriate*. We believe that the USFWS should be prosecuting CDPR under the requirements of the ESA, not granting an Incidental Take Permit (ITP), which would allow CDPR's continued mismanagement of endangered species.

The HCP would authorize damaging motorized recreation in 1,370 acres of western snowy plover (SNPL) habitat, including 412 acres of primary habitat. Nowhere in the HCP does CDPR consider reducing motorized recreation in any SNPL or California least tern (CLTE) Habitat. The HCP acknowledges that the vast majority of current take and future anticipated take of SNPL and CLTE at Oceano is from direct and indirect vehicular impacts of off-road vehicles and other vehicles driving on the beaches and dunes. Off-roading causes and is anticipated to cause take of SNPL through vehicle strikes; crushing of nests; strikes during night riding; nest and brood disturbance; flushing from foraging, roosting, and loafing areas; reducing areas of suitable habitat due to riding; and excessive trash littering, which increases predator populations and predation (HCP 4.3). Off-roading causes and is anticipated to cause take of CLTE through vehicle strikes, nesting disturbance, reducing areas of suitable habitat due to riding, and excessive trash littering, which increases predator populations and predation (HCP 4.4). Additional levels of take are actually caused and anticipated by mitigation measures (HCP 4.3.1.2, 4.4.1.2) intended to reduce the take of SNPL and CLTE caused by off-road activities. These measures that cause additional take include installing and maintaining fencing during nesting/fledging season, monitoring, predator control, and *habitat*

*enhancement* activities (e.g., adding wrack and wood). Some of these mitigation measures and the resultant take would not be required if vehicular use were prohibited or reduced.

Despite off-road activities being the proximate and indirect cause of the majority of the anticipated take of SNPL and CLTE, nowhere in their HCP did CDPR consider any reduction of motorized recreation. In fact, the HCP proposes to dramatically expand off-roading activities into critical protected species habitat and eliminate protected breeding habitat for snowy plovers and least terns by one-third, including removing the 6 Exclosure, which is the most important breeding area for CLTE and SNPL and a critical CLTE night roost area.

ESA section 10(a)(2)(a)(iii) requires CDPR to identify alternative actions to the proposed taking that the applicant considered and the reasons why such alternatives are not being utilized. The HCP fails to do this. Chapter 8 covers the alternatives CDPR considered, but none of the alternatives propose any reduction of motorized recreation, the most obvious and effective method to reduce or prevent take. Reducing or eliminating vehicular recreation would be the most effective measure to reduce take below levels anticipated for the project. The HCP overtly fails to consider this alternative.

The California Coastal Commission (CCC) has notified CDPR that their November 2020 draft HCP does not comply with the Coastal Act and the Local Coastal Program (LCP). The CCC has also asserted that CDPR's delayed Public Works Plan, which proposes development projects and expanded off-road activities within the HCP area, will not comply with the Coastal Act and the LCP. CDPR has ignored the CCC's directive to transition the park away from high-intensity off-road vehicle use to other less-intensive forms of public access and recreation. CDPR has failed to implement most of the CCC's interim measures identified in July 2019, despite the CCChaving made it clear that those interim measures and directives are necessary for Coastal Act and LCP compliance. The CCC has explicitly stated that the proposed projects in the HCP — reducing the southern nesting exclosure acreage and boundary by opening as much as 109 acres of dune habitat to year-round off-road activity; opening up a new 40-acre area near Oso Flaco Lake to off-road activity; conducting mechanical beach grooming — would require either a new Coastal Development Permit (CDP) or an amendment to the existing CDP and must be found consistent with the Coastal Act and the LCP, which prohibit non-resource dependent development in Environmentally Sensitive Habitat Areas.

Neither the proposed PWP nor the draft HCP takes any steps to transition Oceano Dunes away from high-intensity off-road vehicle use. In fact, both plans would increase and expand high-intensity off-road vehicle use. Neither plan uses the best available science to establish a carrying capacity cap on vehicles to reduce conflicts with natural resources and endangered species. Both plans would continue exceptions to off-road use limits and allow unpermitted and illegal special riding events and excessive holiday throngs of vehicles in the park. Neither plan would make seasonal plover habitat exclosures permanent and year-round; instead, the HCP would reduce the area of seasonal exclosures. The HCP would also allow continued vehicle crossings of Arroyo Grande Creek and continued night riding.

We urge USFWS to heed the CCC's common-sense suggestion:

> Rather than completing the HCP at this time, State Parks and USFWS could wait to further consider the HCP and its associated EIR until after the Coastal Commission takes action on State Parks' PWP. The content of the PWP would then be available to inform the range of alternatives and management measures that could need to be considered in the HCP and EIR. Although this would delay the HCP and EIR process, having that process commence after the commission acts on the PWP would provide greater certainty to the agencies involved, and USFWS, State Parks, and the Coastal Commission would have the benefit of the information developed through the completion of the PWP.

In conclusion, the premise of "no net OHV loss" clearly underlies the objectives of the Habitat Conservation Plan. Adherence to this premise in the HCP is inappropriate, as is its presence in CDPR's preliminary Public Works Plan. An attempt to expand OHV riding area in the HCP runs contrary to the ESA's purpose to assure the protection and recovery of listed species, contradicts the fundamental purpose of a Habitat Conservation Plan, and ignores the tenets of the California Environmental Quality Act. ESA section 10(a)(2) contains standards the HCP applicant must provide, including alternatives to reduce or minimize take. ESA section 10(a)(2) also requires an adequate basis for the USFWS findings, in particular, that the applicant will minimize and mitigate the impacts of the proposed take to the maximum extent practicable. Based on the information in the HCP and the issues we have highlighted, the USFWS must deny the ITP permit application because the HCP clearly does not meet the standards under ESA section 10(a)(2)(a) and 10(a)(2)(b). Further, USFWS should initiate enforcement actions, where feasible, to bring CDPR into compliance with the ESA as soon as possible.

Sincerely,

Doug Tait, Conservation Chair
Morro Coast Audubon

Sue Harvey, Conservation Chair
Sierra Club Santa Lucia Chapter

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Lucia Casalinuovo, President
Oceano Beach Community Association

Brad Snook, Chair
Surfrider San Luis Obispo

Fred Collins, Tribal Administrator
Northern Chumash Tribal Council

Jeff Miller, Senior Conservation Advocate
Center for Biological Diversity

Ilona Shakibnia, Representative
Friends of Oso Flaco Lake

Andrew Johnson, California Representative
Defenders of Wildlife

Mary Ciesinski, Executive Director
ECOSLO

Gordon Hensley, Executive Director
San Luis Obispo Coastkeeper

January 21st, 2026

To: comment@oceanoduneshcp.com
Cc: Kirsten.macintyre@resources.ca.gov
addis@assembly.ca.gov
senator.limon@senate.ca.gov
john.laird@sen.ca.gov
jpaulding@co.slo.ca.us
dortizlegg@co.slo.ca.us
dan.carl@coastal.ca.gov
kevin.Kahn@coastal.ca.gov

## Comment Letter on the Recirculated Oceano Dunes Draft Habitat Conservation Plan / Draft Environmental Impact Report

## Submitted on behalf of the Surfrider Foundation

California Department of Parks and Recreation (CDPR) has released the recirculated Oceano Dunes Draft Habitat Conservation Plan and Draft Environmental Impact Report (HCP/EIR), describing CDPR's proposed approach to obtaining an Incidental Take Permit (ITP) for Oceano Dunes State Vehicular Recreation Area (ODSVRA) and the portion of Pismo State Beach (PSB) not managed by the City of Pismo Beach.

The Surfrider Foundation (Surfrider) appreciates the opportunity to comment. However, for the reasons summarized below and detailed thereafter, Surfrider cannot support the untimely and incomplete recirculated HCP/EIR. Instead, CDPR should immediately work with the California Coastal Commission to design and fund independent carrying capacity studies for each park (Pismo State Beach and the ODSVRA), an updated vehicular entrance study, and also work with the SLO County Board of Supervisors and the State Legislature to plan for a Vehicle Free Beach for Oceano by December 2030. O10-1

**I. Status of the Grand Avenue and Pier Avenue Entrances Remains Unresolved Under the Coastal Act**

Public vehicular access to Pismo State Beach south of Grand Avenue remains authorized only on a **temporary basis** under the applicable Coastal Development Permit (CDP). As stated in the California Coastal Commission's March 18, 2021 staff report regarding the Oceano Dunes CDP review, the Commission has never analyzed or authorized permanent vehicular use of the Grand Avenue or Pier Avenue entrances, as required by the base CDP. Consequently, their continued use remains temporary under the Coastal Act.

CDPR's correspondence responding to that staff report acknowledges this unresolved status and contemplates future closure of one or both northern entrances upon establishment of a permanent southern access route, subject to a Public Works Plan (PWP) and additional permitting. The HCP/EIR itself recognizes that Coastal Act compliance remains within the Coastal Commission's authority and that state agencies must act consistently with the Act.

Despite this acknowledged uncertainty, the recirculated HCP/EIR assumes continued vehicular access through Grand and Pier Avenues as a fixed condition rather than treating it as a legally contingent issue. This assumption constrains the range of alternatives and management scenarios evaluated in the document and prejudges issues that are properly within the Coastal Commission's jurisdiction.

We propose that CDPR, California Coastal Commission, the San Luis Obispo County Board of Supervisors, and the State Legislature come together and create a plan for a Vehicle Free Beach for Oceano by December 2030. After all, 43 years ago Pier and Grand Avenues were designated as temporary access routes for vehicles to the beach and State Vehicle Recreation Area (SVRA). Oceano requires a Vehicle Free Beach (VFB) to correct the environmental and economic injustice it has suffered for more than four decades. We propose a 2.2 mile VFB starting 3/10th of a mile North of Pier Avenue and ending 1.9 miles South of Pier Avenue at Pole 4 (boundary of the Oceano Dunes Preserve).

O10-2

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**II. Management of Pismo State Beach South of Grand Avenue Raises Unresolved Statutory and Coastal Act Compliance Questions**

The recirculated HCP/EIR characterizes the area of Pismo State Beach south of Grand Avenue as a State Beach within the San Luis Obispo State Seashore. While PRC § 5001.6(b)(7) establishes the seashore framework, it does not relieve CDPR of the obligation to manage individual units consistently with their statutory purposes and the Coastal Act.

PRC § 5019.56(c) defines State Beaches as areas designed to provide swimming, boating, fishing, and other beach-oriented recreational activities. Public vehicular driving, parking, and tailgating are not explicitly included among those activities. The question is not whether vehicular access could ever occur in a State Beach context, but whether such use—particularly when conducted at scale within an environmentally sensitive habitat

O10-3

area—has been adequately demonstrated to be consistent with the unit's statutory purpose and Coastal Act protections.

Nearly the entire project area is designated as environmentally sensitive habitat area (ESHA) under the Coastal Act and applicable Local Coastal Programs. Coastal Act § 30240 permits only resource-dependent uses within ESHA and requires that adjacent development be sited and designed to avoid significant habitat degradation. As noted by Coastal Commission staff, off-highway vehicular recreation is not resource-dependent, as it can and does occur outside sensitive habitat areas.

The HCP/EIR does not resolve this threshold issue. Instead, it relies on mitigation measures intended to reduce impacts from a use that has not been demonstrated to be permissible in the first place. Whether vehicular recreation can lawfully occur in this ESHA, and under what conditions, is a foundational question that must be addressed through Coastal Act compliance processes, not assumed for purposes of the HCP/EIR.

Further, the Recirculated Draft EIR's analysis of recreation and public access treats vehicular recreation as co-equal with all other forms of coastal use, without adequately analyzing whether vehicle-dominated management degrades or displaces non-vehicular beach access and traditional coastal recreation. At Pismo State Beach south of Grand Avenue, public access increasingly functions around vehicle circulation, parking, and traffic management rather than walking, shoreline recreation, wildlife observation, and other beach-oriented uses that are central to public enjoyment of the coast. O10-3

CEQA requires disclosure of not only quantitative access counts, but also qualitative degradation of recreational experience and functional access. The EIR does not meaningfully analyze how the scale, footprint, and operational dominance of vehicular recreation affect the ability of non-vehicular users to safely and reasonably access and enjoy the beach. This omission understates impacts to coastal access and conflicts with Coastal Act policies intended to protect and maximize public access and recreational opportunities along the shoreline.

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**III. Project Objectives Should Not Be Applied Uniformly to Pismo State Beach and ODSVRA**

The HCP/EIR applies a single set of project objectives to both ODSVRA and Pismo State Beach, despite their distinct classifications, statutory purposes, and management contexts. Many objectives—such as preserving and expanding motorized recreational opportunities or obtaining incidental take authorization—are driven by high-impact vehicular recreation that is characteristic of an SVRA, not a State Beach. O10-4

Lower-impact coastal recreation is routinely managed at other State Beaches through adjustment of permitted activities to protect sensitive species, without the need for an HCP or ITP. The HCP/EIR does not adequately analyze whether similar management approaches at

Pismo State Beach would meet conservation goals while avoiding the need for many of the proposed objectives and mitigations. O10-4

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**IV. Failure to Independently Analyze Carrying Capacity Constitutes a CEQA Deficiency**

While the HCP and EIR provide extensive species-specific analysis for listed terrestrial and aquatic species, they do not adequately address ecosystem-level impacts to the beach and dune system that are fundamental to coastal health. Beach ecosystems function as integrated systems, in which natural wrack accumulation, invertebrate communities, and dune–beach connectivity support shorebirds, nearshore food webs, and overall coastal resilience.

The documents do not meaningfully evaluate how ongoing vehicle traffic, sand compaction, grooming practices, and repeated disturbance may affect these coastal ecosystem processes at the beach–ocean interface. By focusing narrowly on individual species take, the analysis risks understating broader degradation of coastal ecosystem function. Surfrider SLO urges CDPR to address this gap to ensure compliance with CEQA and Coastal Act requirements to protect environmentally sensitive habitat areas and the biological integrity of coastal resources. O10-5

The HCP/EIR does not include an independent carrying capacity analysis for Pismo State Beach separate from ODSVRA. This omission is significant. Joint analysis masks site-specific environmental impacts, visitor experience effects, and feasible management alternatives.

Under CEQA, agencies must meaningfully analyze environmental impacts and reasonable alternatives. By assuming continued vehicular use at Pismo State Beach and coupling its analysis to ODSVRA, the HCP/EIR forecloses consideration of lower-impact recreational models and fails to disclose the full range of environmental consequences.

An independent carrying capacity analysis is necessary to determine allowable uses consistent with ESHA protection and the statutory purpose of Pismo State Beach.

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**V. Recirculation of the HCP/EIR Is Premature Pending Resolution of the PWP and Coastal Act Issues**

As early as December 2020, Surfrider SLO and allied organizations urged CDPR and the U.S. Fish and Wildlife Service to defer completion of the HCP/EIR until after Coastal Commission action on the PWP. That recommendation remains sound.

The scope, alternatives, and mitigation measures evaluated in the HCP/EIR are fundamentally shaped by assumptions about access, use, and management that remain undecided under the Coastal Act. Proceeding with recirculation at this stage risks prejudicing Coastal Commission authority and locking in management approaches before threshold legal determinations are made. O10-6

**VI. Conclusion**

For the reasons above, Surfrider cannot support many of the changes proposed in the recirculated HCP/EIR. CDPR should begin managing Pismo State Beach consistent with its statutory purpose, independently assess carrying capacity, protect ESHA, and engage with the California Coastal Commission to determine allowable public uses before advancing an HCP or seeking incidental take authorization. Further, Surfrider requests CDPR, the California Coastal Commission, the SLO County Board of Supervisors, and the State Legislature come together and create a plan for a Vehicle Free Beach for Oceano by December 2030. O10-7

Jennifer Savage

Surfrider Foundation

*California Associate Policy Director*

Mitch Silverstein

Surfrider Foundation

*California Policy Senior Coordinator*

Charles Varni

Surfrider Foundation, San Luis Obispo

*Chair*

Brad Snook

Surfrider Foundation, San Luis Obispo

*Vice Chair*

# I1 Anderson, John

**From:** **John Anderson** john.e.anderson@sbcglobal.net
**Subject:** Draft EIR comment
**Date:** December 12, 2025 at 7:49 PM
**To:** comment@oceanoduneshcp.com

JA

The dunes should remain open to OHV users. I1-1

John E. Anderson
john.e.anderson@sbcglobal.net

# I2 Anderson, Judith

**From:** **Judith Anderson** gingermintgraham@yahoo.com
**Subject:** Comments - Oceano Dunes District Habitat Conservation Plan (HCP) Recirculated Draft EIR
**Date:** January 22, 2026 at 10:52 AM
**To:** comment@oceanoduneshcp.com

JA

Dear Mr. Glick and the California Department Parks and Recreation,

As a resident of the Central Coast in **Edna**, CA, I find the DEIR and HCP inadequate and they insufficiently address the environmental impacts of the Oceano Dunes State Vehicular Recreation Area. The DEIR and HCP fail to protect threatened species and mitigate impacts to public and environmental health. They clearly prioritize vehicle recreation instead of habitat conservation, not meeting the requirements of an HCP. I2-1

Please change the Draft EIR and HCP to include:

- Comprehensive analysis and consideration of the no-vehicle alternative;
- Decrease the allotted take of the Western Snowy Plover and ESA-listed species;
- Increasing the duration and number of protection measures, and return to year-round exclosures protecting the plover and California least tern..
- Include analysis of the environmental impacts of foreseeable potential future projects, including a southern entrance to the ODSVRA and development around Oso Flaco Lake.

I2-2

**This matters to me because** I am a coastal resident and have seen the devastation caused by vehicles on the dunes and beach. I2-3

Thank you for your time,

Judith G. Anderson

# I3 Anvril, Anne

**From:** **A Avril** email.avrila@gmail.com
**Subject:** Comments - Oceano Dunes District Habitat Conservation Plan (HCP) Recirculated Draft EIR
**Date:** January 23, 2026 at 9:22 AM
**To:** comment@oceanoduneshcp.com

Dear Mr. Glick and the California Department Parks and Recreation,

I am a frequent beach walker, hiker, and resident of the Central Coast, with my friends and family. I have always loved the ocean and the wildlife, birdwatching (especially at Oso Flaco Lake area), and I make my way from Paso Robles to the coast for the respite it gives me in my hectic life, however, the destructive vehicles on the dunes and beach are ruining it.

The quality of the air is diminished, and has been determined to be unhealthy by experts who monitor this, due to the vehicle activity on the dunes. The vehicles make it unsafe to be at the dunes. The vehicles chew up the dunes which exist to protect the coast as a barrier. Without the dunes the shoreline deteriorates. When I come, I eat out, stay over in hotels, and contribute to the local economy. I've become actively invested and interested in this issue because it affects me and my life. **I3-1**

In reading the DEIR and HCP the focus and priorities are clearly on the vehicles and their recreation over the public's health and habitat conservation, which affects me, my family, and friends and the birds and other wildlife that are trying to survive. **I3-2**

The DEIR and HCP don't address the environmental impacts of the Oceano Dunes State Vehicular Recreation Area and don't protect the Western snowy plover and California least tern in a sufficient way. The Western snowy plover is protected by the Endangered Species Act and requires habitat conservation which the HCP, as it is, does not meet the requirements. **I3-3**

Please change the Draft EIR and HCP to include comprehensive analysis and consideration of the no-vehicle alternative and decrease the allotted take of the Western Snowy Plover. Please increase the duration and number of protection measures, and go back to year-round exclosures protecting the Western snowy plover and California least tern. **I3-4**

Please include analysis of the environmental impacts of foreseeable potential future projects, including a southern entrance to the ODSVRA and development around Oso Flaco Lake. **I3-5**

Thank you for your time and consideration,
Anne Avril, 93446

# I4 Bauer, Jennifer

**From:** **Jennifer Bauer** slojen10@gmail.com
**Subject:** Public Comment Oceano Dunes DEIR & HCP
**Date:** January 13, 2026 at 6:18 PM
**To:** comment@oceanoduneshcp.com

JB

Dear Mr. Glick and the California Department Parks and Recreation,

As a resident of San Luis Obispo. I find the DEIR and HCP inadequate and they insufficiently address the environmental impacts of the Oceano Dunes State Vehicular Recreation Area. The DEIR and HCP fail to protect threatened species and mitigate impacts to public and environmental health. They clearly prioritize vehicle recreation instead of habitat conservation, not meeting the requirements of an HCP. I4-1

Please change the Draft EIR and HCP to include:

- Comprehensive analysis and consideration of the no-vehicle alternative;
- Decrease the allotted take of the Western Snowy Plover and ESA-listed species;
- Increasing the duration and number of protection measures, and return to year-round exclosures protecting the plover and California least tern..
- Include analysis of the environmental impacts of foreseeable potential future projects, including a southern entrance to the ODSVRA and development around Oso Flaco Lake

I4-2

The continued use of Off-Highway Vehicles (OHVs) on the dunes poses significant risks that can no longer be overlooked:

- **Protection of Endangered Species:** The dunes are critical nesting grounds for the Western Snowy Plover and the California Least Tern. Continued vehicle activity disrupts these fragile ecosystems and threatens the recovery of these species.
- **Air Quality and Public Health:** Dust emissions from the riding areas consistently violate state air quality standards, impacting the health of downwind communities.
- **Cultural Preservation:** We must respect the ancestral lands of the Northern Chumash and ensure these sacred coastal sites are preserved rather than degraded by recreational traffic.
- **Coastal Resilience:** As sea levels rise, intact dune systems serve as a vital natural barrier. Protecting the dunes from tire-driven erosion is essential for climate adaptation.

I4-3

As native Californian, I have lived along the coast my entire life. I regularly swim, paddleboard, and boogie board in our county's coastal waters. I regularly walk on Pismo Beach, but can't walk past where cars are driving on the beach due to safety and health considerations. While I recognize the history of recreation at this site, the priority must shift toward passive recreation (hiking, birding, and nature study) that allows the ecosystem to heal and ensures the coast remains accessible for all Californians, not just a specific subset of motorized users. I4-4

Please take decisive action to phase out vehicle use and transition Oceano Dunes into a protected state park focused on conservation and sustainable public access. I4-5

Thank you,
Jennifer Bauer

San Luis Obispo, CA

# I5 Betty, Michelle

**From:** **Michelle Betty** claudia.betty1@gmail.com
**Subject:** EIR comment
**Date:** December 14, 2025 at 5:37 PM
**To:** comment@oceanoduneshcp.com

MB

Thank you for this eye-opening story. I used to paint the ocean at the Guadalupe dunes where they also have plovers. It is a beautiful area. It's amazing that officials in the park were trying to destroy/deter the nesting grounds of clovers for off-road enjoyment unbelievable! And sad.
Michelle Betty
Sent from my iPhone

I5-1

# I6 Brophy, Heather

**From:** **Heather Brophy** babarhb0@gmail.com
**Subject:** Draft EIR comment
**Date:** November 27, 2025 at 12:04 PM
**To:** comment@oceanoduneshcp.com

HB

Please, the time has come to take back OUR BEACH and let the HEALING BEGIN, we have the knowledge now that we are killing our Planet and can STOP IT! REMEMBER WE PAY YOU TO PROTECT, PLEASE DO YOUR JOB FOR OUR PLANET!! I6-1

# I7 Brotherton, Richard

**From:** **RICHARD BROTHERTON** ralanbro@gmail.com
**Subject:** Draft EIR comment
**Date:** December 13, 2025 at 11:05 AM
**To:** comment@oceanoduneshcp.com

RB

After watching this legal battle play out while enjoying the Dunes recreation area over the years, the only practical solution is twofold;

1. The Dunes State Park along with pro-wildlife experts and enthusiasts should create the largest and most protected area possible for the endangered birds.

2. Over the years I have become a firm believer that most visitors use the park to simply drive on the beach and not run vehicles on the dunes which of course damages them. Therefore, restricting even further or eliminating vehicles on the dunes would demonstrate a good faith effort toward protecting the environment.

I7-1

Losing the battle for vehicle access of any kind would be devastating. Compromise is the only sensible way forward.

Richard Brotherton
Sr. Engineer II
Sr. Research Scientist II
Biologist

Sent from my iPhone

# I8 Brown, Wendy

**From:** **Wendy Brown** wbrown1865@gmail.com
**Subject:** Public Comment Oceano Dunes DEIR & HCP
**Date:** January 20, 2026 at 1:18 PM
**To:** comment@oceanoduneshcp.com

Dear Mr. Glick and the California Department Parks and Recreation,

As a resident of the Central Coast in San Luis Obispo, I find the DEIR and HCP inadequate and that they insufficiently address the environmental impacts of the Oceano Dunes State Vehicular Recreation Area. The DEIR and HCP fail to protect threatened species and mitigate impacts to public and environmental health. They clearly prioritize vehicle recreation instead of habitat conservation, not meeting the requirements of an HCP. I8-1

Please change the Draft EIR and HCP to include: I8-2

- Comprehensive analysis and consideration of the no-vehicle alternative;
- Decrease the allotted take of the Western Snowy Plover and ESA-listed species;
- Increasing the duration and number of protection measures, and return to year-round exclosures protecting the plover and California least tern.
- Include analysis of the environmental impacts of foreseeable potential future projects, including a southern entrance to the ODSVRA and development around Oso Flaco Lake.

This matters to me because these coastal resources are fragile. Once they are destroyed it will be impossible to bring them back to their original condition. The current proposed rules will allow people to drive unsafely on the dunes, destroy habitat and wildlife, and teach their children that the natural world is theirs to ruin. I8-3

Thank you,

Wendy Brown

# I9 Campbell, Debra & Keneth

**From:** d1982coe@aol.com
**Subject:** We support Oceano Dunes for OHV
**Date:** January 13, 2026 at 5:11 PM
**To:** comment@oceanoduneshcp.com

D

We support the CORVA views the Incidental Take Permit and Habitat Conservation Plan process as a critical opportunity to provide regulatory certainty, align management actions with measurable biological goals, and ensure continued public access while listed species are protected and recovered.
Please keep Oceano Dunes open for OHV.

I9-1

Debra and Kenneth Campbell

# I10 Chavez, Andrea

**From:** **Andrea Chavez** andrea.chavez4343@gmail.com
**Subject:** Off-roading should NOT be allowed
**Date:** November 29, 2025 at 10:30 AM
**To:** comment@oceanoduneshcp.com

In the late 1970s, I was involved in gathering evidence that off-roading in the Oceano Dunes destroys vegetation and habitat, and contributes to poor air quality on the Mesa. This proof is still visible today when the wind is strong.

Slides taken by Randy McCoy throughout the 70s were given to the California Native Plant Society, showing how off-roading destroys vegetation and consequently, the dunes themselves.

I10-1

California State Parks should NOT allow off-roading in the Oceano Dunes. These dunes are so crucial to our environment here on the Central Coast.

Andrea Chavez
Arroyo Grande

# I11 Cimo, Bonnie

**From:** **Bonnie Cimo** bonnie.cimo@gmail.com
**Subject:** Draft EIR comment
**Date:** December 13, 2025 at 8:21 PM
**To:** comment@oceanoduneshcp.com

BC

Protect the dunes and all that lives in them, including the snowy plover. I have been to Oceano Dunes within the past year and found it tragic to see and hear loud, motorized vehicles tearing up the beach. These lands are rare and precious. Humans can survive without this behavior; the snowy plovers cannot.
I agree with the judge: protect the environment.
Thank you
Bonnie Cimo

I11-1

# I12 Cody, Martha

**From:** **Martha Cody** cody.martha@yahoo.com
**Subject:** Incidental Take Permit for Oceano Dunes
**Date:** November 28, 2025 at 1:28 PM
**To:** comment@oceanoduneshcp.com

MC

I read in the San Luis Tribune today that your department is supporting an incidental take permit to allow continued off road vehicles in the Oceano Dunes, despite the impact on the environment, specifically the snowy plovers.

I understand that this site is a major money maker for both the state and local businesses. However, preserving the unique environment of the Oceano Dunes, and the continued increase in snowy plovers numbers, should take precedence over profits. Every bird matters, and even the phrase “incidental taking” reflects misaligned priorities and a lack of humanity. I12-1

Please reconsider this decision and stop supporting industry at the expense of nature.

Sincerely,

Martha Cody
1103 15th Street
Los Osos, CA 93402

Sent from my iPhone

# I13 Davenport, Philip

**From:** **Philip Davenport** philipjohndavenport@hotmail.com
**Subject:** Concerns about proposed Habitat Conservation Plan and Recirculated Draft EIR
**Date:** January 8, 2026 at 12:48 AM
**To:** comment@oceanoduneshcp.com

PD

Dear Sir/Madam

I'm deeply concerned about the proposed HCP for Oceano Dunes. This proposal seriously compromises the needs of the wider natural environment in favour of (human) recreational activities, using off-highway vehicles. Which seems to me a sad dereliction of care on behalf of State Parks and the other custodians of our environment in this instance. Please re-draft the draft! I13-1

Regards
Philip Davenport

**J. H. EDWARDS COMPANY**
**A REAL PROPERTY CONCERN**
***Specializing in Water Neutral Development***

January 23, 2026

State of California / Natural Resources Agency
California Department of Parks and Recreation (DPR)
Off-Highway Motor Vehicle Recreation (OHMVR) Division
1725 23rd Street, Suite 200
Sacramento, CA 95816

Comments Submitted via email to comments@oceanoduneshcp.com
Attention: Ronnie Glick, Senior Environmental Scientist

Subject: Comments Re: DPR recirculated Oceano Dunes District Habitat Conservation Plan (HCP) and DEIR/DEA (SCH# 2018011012).

Please see the comments below related to the HCP and approximately 3500-acre Oceano Dunes State Vehicular Recreation Area (ODSVRA).

Chapter 7. FUNDING

The HCP covers ten (10) federally listed plants and animals. This number is infinitesimal as compared to the total number of species that utilize the ODSVRA. Spending $97 - $110 million over the next 25-years to manage, protect and conserve the 10 individual plants and animals covered would likely fail a cost/benefit analysis. Creating more continuous open space that eliminates vehicle access along the beach and around the Pismo Dines Natural Preserve (PDNP) including the Arroyo Grande Creek mouth would better serve the purpose. In doing so, not only would many of the covered species in the HCP be conserved, but a myriad of other species would also benefit. The management of species individually appears to be less efficacious than a multi-species habitat conservation approach, especially in this instance. The draft HCP does not demonstrate a favorable cost/benefit ratio to warrant proceeding with the current funding regime. I14-1

Chapter 8. ALTERNATIVES
Project Alternatives Considered and Rejected

**Changes in SVRA access** - Changing the primary entrance to the ODSVRA at the closed oil refinery (Phillips) would allow Pier Ave. in Oceano to be closed to beach access by vehicles. This commenter supports using the existing and proposed Offer-to-Dedicate (OTD) alignment at Phillips for access to the ODSVRA. The closure of the Pier Ave. sand ramp to vehicle access to the beach (except for emergencies) would eliminate the Arroyo Grande Creek crossing, and subsequently the need for it to be a covered activity. It appears all of the animals covered in the HCP are adapted to freshwater habitats making Arroyo Grande Creek, its estuary, and the I14-2

contiguous PDNP vitally important to conservation of all species that utilize the ODSVRA. The protection of Arroyo Grande Creek should be the centerpiece of a HCP mitigation program. A new entrance to the ODSVRA at Phillips should be further considered as an alternative in this draft HCP. I14-2

**Restricted riding times** - All nighttime dune riding should be prohibited, if not already. In reviewing the January 1, 2024 DPR Order No. 554-005-2024, Vehicle Operations directive in Appendix B, it does not appear nighttime riding is prohibited. Moreover, given "restricted riding times" as a project alternative is being dismissed in the HCP, the commenter must conclude nighttime riding will continue, however should be reversed. I14-3

Please reject the draft HCP and Proposed Environmentally Superior Alternative as presented. Consequential mitigation should be cost effective and include multiple species and in this case, could be achieved with the prohibition of vehicles along all beachfront from the current Pier Ave. entrance to approximately mile marker 3.75 fronting the PDNP. I14-4

Furthermore, it is unclear how the HCP relates or "dovetails" with other conservation and habitat protection plans in effect at the ODSVRA. Examples include; but are not limited to, the Biodiversity Management Plan and the Wildlife Habitat Protection Plan. Likewise, current dust mitigation strategies pursuant to the Stipulated Order of Abatement often conflict with habitat management efforts by creating landscapes unsuitable for covered species, the Western Snowy Plover being such an instance. A discussion of how the HCP would work in concert with other conservation and mitigation efforts in the ODSVRA would appear to be constructive and informative. I14-5

In conclusion, it is this commenter's opinion, the draft HCP does not advance the prospects of a future for the ODSVRA. As a practical matter, the HCP attempts to reinforce the notion of maintaining the status quo for the ODSVRA. In a post-Coastal Commission closure litigation period, it appears there is a limited amount of time to make major changes to the ODSVRA and its operations. Without specific changes and adaptations, some of which were dismissed in the HCP, permanent closure of the park to vehicles is becoming increasingly likely. Accordingly, there may be adverse economic implications from the closure of the ODSVRA. While it is unlikely the ODSVRA visitor-ship contributes the $500 million often cited, it could be responsible for as much as 10% of San Luis Obispo County's $1 billion hospitality and visitor-serving sector. I14-6

Sincerely,

*Jeffrey H. Edwards*

Jeffrey H. Edwards

# I15 Emanual, Karen

**From:** **Karen Emanuel** karenabbychallice@yahoo.com
**Subject:** California Environmental Quality Act (CEQA) for the Recirculated Draft EIR.
**Date:** November 24, 2025 at 9:00 PM
**To:** comment@oceanoduneshcp.com

KE

I am greatly concerned about the status of endangered species under the Habit Conservation report. I am here to advocate for their consideration and inclusion. I15-1

Thank you,

Karen Emanuel

# I16 Farhar, John

**From:** **johnfarhar** johnfarhar@yahoo.com
**Subject:** Draft EIR comment Oceano HCP
**Date:** December 14, 2025 at 12:34 PM
**To:** comment@oceanoduneshcp.com

J

The HCP needs to strenuously protect the species, not finding a work around. The violations cannot continue, complete closure should preceed any more losses if there are no 100% protective alternatives implemented. Vehicles just driving on the beach continuously impact the snowy plovers, catastrophicslly scattering families of plovers and committing vehicle strikes, many of which could be unknown, washed away with the tide. I16-1

The vehicles crossing Arroyo Grande Creek is unconscionable with the Endangered South Central Coast Steelhead trout occupying the creek and spawning in and out through the section driven through by most vehicles driving on the beach. The HCP must address this impact comprehensively and implement more of the feasible alternatives. I16-2

State Parks needs to prioritise finding better suited sites for off road recreation after the state collecting all those registration fees for all these years. The question of where those fees are allocated dhould be discussed. I16-3

Sincerely,

John Farhar
Atascadero, Ca

Sent from my Galaxy

# I17 Han, G

**From:** **G Han** lzitaskam@outlook.com
**Subject:** Motorized vehicles on the dunes
**Date:** November 28, 2025 at 1:39 PM
**To:** comment@oceanoduneshcp.com

GH

Hi, I am fine with off road vehicles in designated areas but not at or on the beach. This is going too far when I live four miles from this area and can hear the engines roaring. Many of these vehicles have poor or no muffler equipment and are not equipped with clean fuel burning carburetors. Also driving on the beach is a fun but antiquated activity that should be abandoned asap.
Thank you,
GH

I17-1

Sent from my iPad

# I18 Harris, Ed

**From:** **Ed Harris** movieln2@gmail.com
**Subject:** Draft Habitat Conservation Plan & EIR
**Date:** January 22, 2026 at 12:40 PM
**To:** comment@oceanoduneshcp.com

EH

Dear State Parks-

As a resident of the Central Coast in Nipomo, I find the DEIR and HCP inadequate and they insufficiently address the environmental impacts of the Oceano Dunes State Vehicular Recreation Area. The DEIR and HCP fail to protect threatened species and mitigate impacts to public and environmental health. They clearly prioritize vehicle recreation instead of habitat conservation, not meeting the requirements of an HCP. **I18-1**

Please change the Draft EIR and HCP to include:

- Decrease the allotted take of the Western Snowy Plover and ESA-listed species;
- Increasing the duration and number of protection measures, and return to year-round exclosures protecting the plover and California least tern..
- Include analysis of the environmental impacts of foreseeable potential future projects, including a southern entrance to the ODSVRA and development around Oso Flaco Lake.

**I18-2**

**This matters to me because...**

- I believe the health of the ocean and the wildlife in the unique Oceano Dunes complex is more important than the recreational opportunities of a limited number of OHV enthusiasts.
- I am a coastal resident and have seen the devastation caused by vehicles on the dunes and beach.
- I live near Oceano Dunes and have been impacted by poor air quality.
- I do not feel safe to be on the beach with vehicles present.

**I18-3**

Ed Harris

# I19 Hawkins, Anita & Rob

**From:** **Anita Hawkins** schmiems1@icloud.com
**Subject:** Draft EIR comment
**Date:** December 15, 2025 at 11:42 AM
**To:** comment@oceanoduneshcp.com

AH

We live about a mile and a half from the Oceano dunes. Motorized vehicles in the dunes send sand into the air affecting air quality, and they also create noise pollution. These activities are clearly discernible from our home. It is especially prevalent on the weekends and holidays. This activity must surely affect the wildlife, including the Snowy Plovers, much more than it does us. It's time to end it.
Thank you for considering this issue.
Anita and Rob Hawkins

I19-1

# I20 Heckman, Diane

**From:** **Diane Heckman** dianemheckman@yahoo.com
**Subject:** Draft EIR
**Date:** January 24, 2026 at 5:46 AM
**To:** comment@oceanoduneshcp.com

DH

Please prioritize the health of the snowy plovers and least turns over motorized recreational activities. It's very disturbing that the habitat is being disrupted. Snowy plovers are faithful to the nest site. They want to return to the exact site. As you might imagine, having an ATV drive over their nests is very bad for the species.

I'm a birder from Santa Cruz. We need to share the beaches with the wild animals who depend on them for their very lives.

I20-1

Diane Heckman

Sent from Yahoo Mail for iPhone

# I21 Holstein, Dr. Glen

**From:** holstein@cal.net
**Subject:** Draft EIR comment
**Date:** November 24, 2025 at 6:03 PM
**To:** comment@oceanoduneshcp.com

I strongly support managing Nipomo Dunes Park to maximally protect its endangered and sensitive animal and plant species. I formerly worked there and am familiar with the dunes' very sensitive habitats, great biodiversity, and great need for better protection. After my work at the dunes and inspired by them I earned a PhD in Botany at UC Davis and participated in many successful conservation projects including helping creation of Carizo Plain and Berryessa-Snow Mountain national monuments. I also visited many of earth's greatest nature areas but never found any like the Nipomo Dunes and the amazing habitats they provide for so many rare and sensitive species. Please give them maximum protection! I21-1

Sincerely,

Dr. Glen Holstein

Senior Director of Tuleyome

# I22 Howell, Heather

**From:** **Heather Howell** heatherclimateaction@gmail.com
**Subject:** Comments - Oceano Dunes District Habitat Conservation Plan (HCP) Recirculated Draft EIR
**Date:** January 21, 2026 at 9:59 PM
**To:** comment@oceanoduneshcp.com

RESPECT ALL LIVING BEINGS EQUALLY. Allowing Vehicles to destroy habitat of a species affects the entire web of life, INCLUDING we proud, mindless humans.

There are many reasonable ways to handle this issue and ongoing stand-off while maintaining the Agency's Mission and effectiveness. Seasonal access, limit on daily traffic, cap on weight of vehicles and load, HIGH7 Value ticketing for violations (word gets out- people police themselves), etc.

Vehicular access to a local natural treasure, unfairly deprives residents their personal freedom to SAFELY enjoy untrammeled Nature. It also devalues their personal investment in their homes and community, while allowing individuals from elsewhere to damage what they have no stake in, and contribute nothing to. I22-1

Please, develop some Backbone, to PREVENT a Vocal, Aggressive, Selfish Minority from overwhelming the Rights and Peace of the Majority and VOICELESS.

It's within your Authority to ACT on YOUR enlightened vision for our County and State, for 7 Generations Forward, not just today. That is true LEADERSHIP, and what we hope and Pray you will RISE TO FULFILL.

Thank you for your Efforts & Vision!
Heather Howell
805-234-5644
Atascadero, CA

# I23 Hunt-Pierson, Lucy

**From:** **Lucy Pierson** lucyhuntpierson@gmail.com
**Subject:** Oceano Dunes
**Date:** November 29, 2025 at 11:16 AM
**To:** comment@oceanoduneshcp.com

LP

Protect the endangered snowy plovers by totally restricting automotive traffic within their breeding grounds. I23-1

Sincerely , Lucy Hunt-Pierson
641 Park Ave.
Cayucos ,Ca.

# I24 Hurt, Carla

**From:** **carla hurt** gotocarla@yahoo.com
**Subject:** Public Comment Oceano Dunes DEIR & HCP
**Date:** January 22, 2026 at 1:44 PM
**To:** comment@oceanoduneshcp.com

CH

Public Comment Oceano Dunes DEIR & HCP

Dear Mr. Glick and the California Department Parks and Recreation,

As a resident of the Central Coast in GROVER BEACH , I find the DEIR and HCP inadequate and they insufficiently address the environmental impacts of the Oceano Dunes State Vehicular Recreation Area. The DEIR and HCP fail to protect threatened species and mitigate impacts to public and environmental health. They clearly prioritize vehicle recreation instead of habitat conservation, not meeting the requirements of an HCP. I24-1

Please change the Draft EIR and HCP to include:

- Comprehensive analysis and consideration of the no-vehicle alternative;
- Decrease the allotted take of the Western Snowy Plover and ESA-listed species;
- Increasing the duration and number of protection measures, and return to year-round exclosures protecting the plover and California least tern..
- Include analysis of the environmental impacts of foreseeable potential future projects, including a southern entrance to the ODSVRA and development around Oso Flaco Lake.

I24-2

**This matters to me because…**

- I am a hiker, ocean kayaker and the health of the ocean and our coast directly affects my activities
- I am a coastal resident and have seen the devastation caused by vehicles on the dunes and beach.
- I live near Oceano Dunes and have been impacted by poor air quality.
- I live in Oceano/Grover Beach and do not feel safe to be on the beach with vehicles present.

I24-3

Thank you,
Carla Hurt
Resident and homeowner
Grover Beach

# I25 Infield, Maryan

**From:** **Maryan Infield** maryan.infield@gmail.com
**Subject:** Comments - Oceano Dunes District Habitat Conservation Plan (HCP) Recirculated Draft EIR
**Date:** January 22, 2026 at 12:23 PM
**To:** comment@oceanoduneshcp.com

MI

As a resident of San Luis Obispo,please change the Draft EIR and HCP to include protection for the Snowy Plover and discontinue the use of off road vehicles on Oceano beaches. I25-1

Thank you,
Maryan Infield San Luis Obispo,CA 93401

# I26 Johansen, Cinda

**From:** **Cinda Johansen** ccjohansen@sbcglobal.net
**Subject:** Draft EIR comment
**Date:** November 24, 2025 at 7:37 PM
**To:** comment@oceanoduneshcp.com

CJ

I hope that in fact and actions that all of the endangered species are taken and respected. Once a pristine protected area is disturbed it is difficult to restore to its original.
Sent from my iPhone

I26-1

# I27 Johnson, Kathy

**From:** **Kathy** kathyjohnson0039@sbcglobal.net
**Subject:** Draft EIR comment
**Date:** December 13, 2025 at 3:55 PM
**To:** comment@oceanoduneshcp.com

I support limiting or banning off-road vehicles in the dunes. During 2020 we would walk that stretch to the beach and it was pristine. We saw so many new species of birds and we ever had in the past 20 years that we've lived here. I27-1
How could it not have a negative impact driving a vehicle in nature?
Cordially
Kathy Johnson
Sent from my iPhone

# I28 Kayaker Paddler

**From:** **kayaker paddler** kayakersandcat@gmail.com
**Subject:** Draft EIR comment
**Date:** December 13, 2025 at 12:07 PM
**To:** comment@oceanoduneshcp.com

KP

GET THE MOTORIZED VEHICLES OFF THE DUNES!!!!!!!!!!!!!!
Sent from my iPad

I28-1

# I29 Kelly, Lisa Ann & Family

**From:** **MiTmite9** bluesunflowersb@gmail.com
**Subject:** Draft EIR comment
**Date:** November 24, 2025 at 7:10 PM
**To:** comment@oceanoduneshcp.com

To the California Department of Parks & Recreation:

re: Oceano Dunes District Habitat Conservation Plan Recirculated Draft EIR

Dear Department of Parks & Recreation Members of the Board:

My family and I urge DPR to make certain that, as regards Oceano Dunes, the Endangered Species Act is strictly upheld. We believe that wildlife habitat and its inhabitants need any and all possible protection

It is our hope that you will do more than just attempt to mitigate negative impact, but also strive your utmost to be proactive in protecting habitat and species negatively affected by any recreational use of the dunes.

We have never thought it was a good idea to allow off-road use of The Oceano Dunes. To allow such vehicle use goes against any reasonable hope for keeping the dunes safe and environmentally friendly —— for innumerable species. Allowing motorcycles, ATVs, dune buggies and four-wheel drive vehicles to continue to threaten the well-being of so many different animals and plants is a travesty. I29-1

We understand that this Draft EIR is all about compromise, but we hope that one day soon everyone involved will realize that sensitive habitat and endangered species trumps off-road recreation.

Thank you for permitting us to voice our opinion on this matter.

Sincerely,

The Kelly Family:
Lisa Ann
Chad
George and
Sergei

I am writing to state my disagreement with the proposed Draft Habitat Conservation Plan for the California Department of Parks and Recreation Oceano Dunes District. I have lived in Oceano since 1983 and in South County since 1974. I constantly walk the beach unless traffic is too overwhelming preventing a safe experience.

The proposed summarized goals seem to suggest the issue will solve the severe problems caused by off road traffic on the beach and in the dunes, as stated by the Purpose and Goals:

> This HCP is part of a conservation effort initiated by the OHMVR Division to protect, conserve, and restore the natural resources of Pismo State Beach and Oceano Dunes SVRA while allowing CDPR to continue to operate the park units for public use and enjoyment consistent with unit classifications. The primary goals of the HCP's conservation program are to provide habitat-level protection and management and to minimize human-related impacts to key threatened or endangered wildlife, . . .

I30-1

However, the actual proposed "solutions" do not. The proposed "solutions" are upside down and in direct opposition to the stated goals of California Department of Parks and Recreation:

> The California Department of Parks and Recreation ("State Parks") protects and preserves California's most significant natural and cultural resources while delivering public spaces to bring families and friends together. California's state parks provide a wide array of recreational opportunities for everyone's benefit and enjoyment. State Parks' legal mandate is articulated in its mission "to provide for the health, inspiration, and education of the people of California by helping to preserve the state's extraordinary biological diversity, protecting its most valued natural and cultural resources, and creating opportunities for high-quality outdoor recreation." (underlines are mine)

The mission statement is clear, protection of biodiversity, natural and cultural resources eclipse recreation. For decades California Department of Parks and Recreation has placed recreation over protection of biodiversity,

I30-2

natural and cultural resources in the Oceano-Nipomo-Guadalupe Dune Complex and most dramatically within the Pismo State Beach and Oceano Dunes State Vehicular Recreation Area (SVRA) all the while ignoring the designation of the Oceano-Nipomo-Guadalupe Dune Complex as National Natural Landmark designated in 1974. It was designated a National Natural Landmark status for its status as the largest, relatively undisturbed coastal dune tract in California.

The designation was based on several unique geological and biological factors:

- **Geological Significance**: It is the largest remaining dune system south of San Francisco and the second largest in California, spanning an 18-mile stretch of coastline. The area includes the tallest sand dunes on the U.S. West Coast, reaching heights of up to 550 feet.
- **High Endemism**: The dunes exhibit one of the highest rates of endemism (species found nowhere else) of any dune system in North America.
- **Ecological Diversity**: The complex supports a unique "dune-lagoon" ecosystem that serves as a critical habitat for over 120 rare species of plants and animals, including more than 18 federally endangered species. I30-2
- **Critical Habitat**: It provides vital nesting and breeding grounds for federally protected species such as the **Western snowy plover** and the **California least tern**, which were listed as endangered around the same time in 1970.
- **Conservation Priority**: In the 1970s and 1980s, the U.S. Fish and Wildlife Service ranked the area as the most unique and fragile ecosystem in California, placing it first on a list of 49 habitat areas in need of protection.

The dune complex is now adjacent to the recently designated Chumash Heritage National Marine Sanctuary. The reason for **High Endemism, Ecological Diversity,** and **Critical Habitat** values exist because this dune complex formed within the northern portion of an oceanographic and meteorological transition zone. Many species interact with the beach and tidal areas as part of their natural range. They have been—and continue to be—harassed and denied access because of vehicle traffic on the beach.

The year-long closure due to COVID allowed the beach to return to a natural, wild state, clearly demonstrating the severe impacts of beach vehicle traffic. Foredunes quickly began to reform. Species not seen for years returned to previously denied ranges, and populations of regularly observed species increased. When the beach reopened after the year-long closure, in less than eight hours or so all reforming dune features were flattened, returning clams were crushed, and returning species fled.

I30-3

This is further proof that State Parks places recreation above all else in Pismo State Beach and the Oceano Dunes State Vehicular Recreation Area (SVRA). Additional evidence is found within the EIR itself, which prioritizes recreation over the protection of biodiversity and natural and cultural resources. In particular the request for permission of formalizing the "taking"(killing or injuring) of endangered species by vehicles demonstrates this priority.

The EIR appears to be written by someone—or multiple authors—schooled in **agnotology**, the study of how ignorance or doubt is deliberately produced, often through the dissemination of deceptive or misleading scientific information. Where in California State law does recreation override (pun intended) the California Environmental Quality Act (CEQA) or the Federal Endangered Species Act of 1973?

> • Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated, or
>
> • Include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse effect on the environment.

I30-4

A nice try. How many people from outside the area would actually come here to use local neighborhood facilities? This appears to be another example of the dissemination of deceptive or misleading information. See below the attached photograph taken during the COVID shutdown. This scene illustrates what a normal day should be on our beach rather than an exception caused by the COVID beach closure to vehicles.

It is time for State Parks to enforce its own stated mission guidelines at Pismo State Beach and the Oceano Dunes State Vehicular Recreation Area (SVRA), and to enhance the Oceano–Nipomo–Guadalupe Dune Complex National Natural Landmark in coordination with the Chumash Heritage National Marine Sanctuary.

I30-4



Sincerely,

Karl Kempton

Oceano, California

# I31 Kidney, Margaret

**From:** **Margaret Kidney** m50kidney@gmail.com
**Subject:** Draft EIR comment
**Date:** December 14, 2025 at 10:43 AM
**To:** comment@oceanoduneshcp.com

MK

You know this is the home owners reaching for anything to shut down public access to "their" beach!! Prima donnas don't want anybody messing up their views. The plovers gave been given space for 25 years and are not repopulating at the given numbers expected. Stop using them as an excuse to to limit public access. A reporter needs to do an indepth report on this and expose the truth of the lies these people are trying to feed the public it's ridiculous. I31-1

# I32 Kitman, Lorraine

**From:** **Lorraine Kitman** lkitman21@gmail.com
**Subject:** Draft EIR comment
**Date:** December 15, 2025 at 12:45 AM
**To:** comment@oceanoduneshcp.com

LK

Hello,

I have lived in Arroyo Grande for almost 50 years and walking on or by the beach (Oceano, Grover, Pismo, Avila) has been one of my favorite activities.

I urge State Parks to abide by the Endangered Species Act and pro-actively protect the Western Snowy Plover habitat, including Plover nesting areas that are beyond the spots set aside to protect them. Please keep the beach a place where endangered species like the Plover can thrive enough to overcome being endangered. I32-1

Sincerely,
Lorraine Kitman
lkitman21@gmail.com

Sent from my iPhone

# I33 Kohler, Barbara

**From:** **Barbara Kohler** kohlerbb@gmail.com
**Subject:** Draft EIR comment
**Date:** December 15, 2025 at 10:47 PM
**To:** comment@oceanoduneshcp.com

BK

Save the birds! I33-1

# I34 Koppel, Cara

**From:** **Cara Mae** caramae77@gmail.com
**Subject:** Draft EIR comment
**Date:** December 13, 2025 at 11:12 AM
**To:** comment@oceanoduneshcp.com

CM

I am writing to say that protection of animal's always needs to come before profit and recreation. I strongly support anything that needs to be done to protect wildlife, including the wildlife at Oceano Dunes.

Off-roading in an area so close to the a shoreline is likely already not good for the environment, sea life and birds. California State Park's knew better than to do anything to tamper with the nesting of the Snowy Plover and I strongly agree with this Judge's ruling. I34-1

I encourage State Parks to do whatever is required to protect all wildlife at our State Park's.

Thank you for your time.

Cara Koppel
Sent from my iPhone

# I35 Kuchins, D.M.

**From:** **D M Kuchins** hi.brix.di@gmail.com
**Subject:** Draft EIR comment
**Date:** December 16, 2025 at 12:08 AM
**To:** comment@oceanoduneshcp.com

DK

No off road vehicles.

More native species, endangered or not. Pants and other creatures also killed or diven from changed habitat.

Those vehicles are also a dangerous, noisy, nuicance. Prevent quiet, peaceful use of space by others.

I35-1

# I36 Kudrna, Michael

**From:** **michael kudrna** kudrna@hotmail.com
**Subject:** Draft EIR comment
**Date:** December 13, 2025 at 1:16 PM
**To:** comment@oceanoduneshcp.com

MK

Open the other entrance to the dunes, and open more riding area away from where they nest. They don't nest too far from the beach.

Charge 10 bucks for day pass and use the extra 5 for a desalinization through evaporation plant at the 76 grounds.

Placing people and birds that don't belong need an off highway park created the problems.

There were no mention of plovers 100 years ago.

I36-1

Get Outlook for Android

# I37 Landau, Dougas

**From:** **Doug Landau** doug.landau@gmail.com
**Subject:** Question for you regarding snowy plovers
**Date:** December 1, 2025 at 3:12 AM
**To:** comment@oceanoduneshcp.com

DL

Hi Ronnie Glick!

Sir,
I wonder, after reading the news:
- one article said the plovers like the 4" depression made by OHV tires. Could it be that this ideal-nesting-spot-making offsets some or all of the deaths?
- Where and when vehicles are ousted, do predators then move in greater numbers, and eat plovers in numbers comparable to those killed by vehicles?

I37-1

The numbers seem quite positive to me; and also, the numbers lost per year seem quite small.
my first reaction is that the judge and public have had a knee-jerk reaction and not considered the issue carefully. But of course I am totally unqualified to say and cannot begin to address how many plovers there would be if all vehicular activity were banned.

Thanks for reading and responding with your thoughts, time permitting.

Best
Douglas Landau

# I38 Lewis, Cheryl

**From:** **Cheryl Lewis** cmlnp50@gmail.com
**Subject:** Public Comment Oceano Dunes DEIR & HCP
**Date:** January 19, 2026 at 1:10 PM
**To:** comment@oceanoduneshcp.com

CL

Dear Mr. Glick and the California Department Parks and Recreation,

As a resident of the Central Coast in **San Luis Obispo**, I find the DEIR and HCP inadequate and they insufficiently address the environmental impacts of the Oceano Dunes State Vehicular Recreation Area. The DEIR and HCP fail to protect threatened species and mitigate impacts to public and environmental health. They clearly prioritize vehicle recreation instead of habitat conservation, not meeting the requirements of an HCP. I38-1

Please change the Draft EIR and HCP to include:

- Comprehensive analysis and consideration of the no-vehicle alternative;
- Decrease the allotted take of the Western Snowy Plover and ESA-listed species;
- Increasing the duration and number of protection measures, and return to year-round exclosures protecting the plover and California least tern..
- Include analysis of the environmental impacts of foreseeable potential future projects, including a southern entrance to the ODSVRA and development around Oso Flaco Lake.

I38-2

I hope you read this and take these requests into consideration.

Cheryl Lewis

# I39 lupec2a@icloud.com

**From:** lupec2a@icloud.com
**Subject:** Draft EIR comment
**Date:** December 12, 2025 at 10:08 PM
**To:** comment@oceanoduneshcp.com

Welp, you keep voting in dumb ass liberal democrats this is what you get. This stupid ass bird is all over the United States coastlines not to include also our neighbors next door, Mexico. It's time to start using common sense and enjoy the lands that we have here to enjoy and stop worrying about some damb bird , my goodness people!! We have bigger problems in this land and in the world, stop the B.S already and start living a little g-wiz man!
Sent from my iPhone

I39-1

# I40 McFarlane, Rebecca

**From:** **Rebecca McFarlane** wolfandwillow.adventures@gmail.com
**Subject:** Océano dunes ohv
**Date:** January 13, 2026 at 4:53 PM
**To:** comment@oceanoduneshcp.com

RM

Hello,

I am a concerned citizen writing in to request a moratorium on vehicles allowed on beaches in the Pismo beach Océano dunes area. Considering the snowy plover continues to be at risk of extinction it is extremely important we honor their right to life and put a stop to humans recreational activities that put them at risk. I40-1

Thank you,

Rebecca McFarlane

Sent from my iPhone

# I41 Midkiff, Linda

**From:** **Linda Midkiff** lmidkiff105@gmail.com
**Subject:** Protecting Snowy Plovers
**Date:** November 28, 2025 at 1:16 PM
**To:** comment@oceanoduneshcp.com

LM

Protecting the snowy plover should be a no-brainer. Off-roading in their nesting areas is not necessary or required for the health and safety of humans, but keeping the area free of vehicles IS necessary and required for the health and safety of the birds. There are plenty of areas for off-roaders to play. They don't need to be disturbing nesting areas. Keep them OUT! I41-1

--

# I42 Miller, Terese

CA Department of Parks and Recreation/OHV

PO Box 942896

Sacramento, CA 94296

Telephone (916) 902-8598

Oceano Dunes District Ste 270; Pismo Beach 93349

Oceanoduneshcp.com

OHVINFO@parks.ca.gov

**RE: Letter in support of the recently announced ruling by the environmental protection agency regarding saving the local population of snowy plover**

Dear Commission persons,

I am a resident of Ocenao. Over the years Oceano has endured the increasing onslaught of the off-road vehicle drivers and endured the degradation of our local beaches, roads and wildlife. The State Parks and certain off-road businesses and entities (Friends of the Dunes, ASA, etc.), both here and elsewhere have begun a monolithic campaign to drown out local voices for the preservation of endangered species throughout the dunes complex.

The Oceano dunes is an integral part of the survival of several species. State parks personnel often classify plover strikes as "unknown cause of death" even when there is obvious evidence the bird/bird eggs/nesting chicks have been killed by a vehicle. Vehicle tracks have been wiped over or ignored thereby reducing the actual "take" numbers reported. This behavior has been sanctioned, even encouraged by top management in the Oceano Dunes SVRA. Oceano Dunes SVRA should not be given further "take" authorizations to further continue the demise of the plover population. I42-1

During the pandemic closure of the dunes complex, an increase in California costal snowy plover numbers showed that this particular subspecies cand affect a comeback from its perilous situation. I applaud the recognition from the recognition from the environmental protection agency to codify the rules regarding the Parks and their responsibility to preserve and protect all species with the jurisdiction of the Ocenao Dunes SVRA.

Please do not let the fate of Oceano dunes and its integral species die under the wheels of the OHV riders through obsequious deference to clubs, business and Ocenao Dunes SVRA.

Sincerely,



Terese Miller

# I43 Mintzer, Carole

**From:** **Carole Mintzer** camintzer@gmail.com
**Subject:** Public Comment Oceano Dunes DEIR and HCP
**Date:** January 22, 2026 at 7:32 PM
**To:** comment@oceanoduneshcp.com

Dear Mr. Glick and the California Department of Parks and Recreation,

The DEIR and HCP for Oceano Dunes seem to give priority to offroad vehicles to the detriment of endangered species that call the dunes their home. You need to go back to the drawing board and come up with a plan that considers a no-vehicle option and at the very least, increases protective measures for snowy plovers and other endangered species.

I live in Los Osos and had the great opportunity to visit Oceano Dunes when vehicles were prohibited during Covid. What a beautiful, serene place it was and should be again. I won't go there now because of the noise and recklessness of the offroad vehicles. Please make it a safe place for beach walkers again.

I43-1

Thank you for your consideration of my comments,

Carole Mintzer
Los Osos, CA 93402

# I44 Mohle, Rob

**From:** **rob mohle** rlmohle@gmail.com
**Subject:** Oceano dunes
**Date:** January 16, 2026 at 8:46 PM
**To:** comment@oceanoduneshcp.com

RM

Beaches are sensitive wildlife habitat not public highways. Protect Oceano dunes from off-road vehicles.
Sent from my iPhone

I44-1

# I45 Moran, Linda

**From:** **Linda Moran** lmoran1@live.com
**Subject:** Oceano Dunes
**Date:** January 23, 2026 at 12:36 PM
**To:** comment@oceanoduneshcp.com

Dear Mr. Glick and the California Department of Parks and Recreation,

As a resident of the Central Coast in Nipomo, I find the DEIR and HCP inadequate and insufficient in addressing the environmental impacts of the Oceano Dunes State Vehicular Recreation Area. The DEIR and HCP fail to adequately protect threatened species and to mitigate ongoing impacts to public health and environmental quality. As written, they prioritize vehicle recreation over habitat conservation and therefore do not meet the fundamental requirements of a Habitat Conservation Plan.

I45-1

I urge the Department to consider a more balanced approach that protects sensitive dune habitats while addressing public access concerns. One potential compromise would be to allow limited vehicle access on designated beach areas while prohibiting vehicles in the dune ecosystem itself, where damage to habitat, wildlife, and air quality is most severe. This approach would better align recreation with conservation and reflect the intent of California's environmental protection laws.

Thank you for considering these concerns.

Sincerely,
Linda Moran
Nipomo, CA 93444

# I46 Newell, Tom

**From:** **Tom Newell** macnnoodles@icloud.com
**Subject:** Draft EIR comment
**Date:** December 13, 2025 at 12:39 PM
**To:** comment@oceanoduneshcp.com

TN

Biodiversity is important. When the humans were commanded to stay in there crates, the plovers expanded their domain. If a snowy plover were to nest at a house on the strand, would they lose their home because they are endangered? No that's ridiculous. Are the snowy plovers going to be eradicated because we push them back to their designated area? No of course not. Just because the humans were illegally sequestered to their homes does not mean they lose the area that was designated for them. It is a very awesome experience to drive and play in the sand. We have to protect the land, the wildlife, and the humans ability to play. I46-1

tom newell

# I47 Ondrejka, John & Nancy

**From:** **john ondrejka** ondrejkas@gmail.com
**Subject:** OCEANO DUNES
**Date:** January 19, 2026 at 2:02 PM
**To:** comment@oceanoduneshcp.com

JO

As residents of San Luis Obispo county who live about 2 miles from the dunes, we are shocked to learn of our State Parks continued support for the ATV vehicles. Off-road vehicles cause destruction of sensitive habitat and the killing of endangered species. Additionally, particulate pollution and noise from unsupervised ATV vehicles allowed to ride late into the night (well past the posted hours) affect widespread residential areas. I47-1

We believe this special place needs to be protected from all ATV riding. This would actually encourage more people to visit and enjoy the natural beauty of the dunes.

--
-John and Nancy Ondrejka
Arroyo Grande, CA 93420

# I48 Oneill, Kathleen

**From:** **KATHLEEN ONEILL** koneill555@gmail.com
**Subject:** Draft EIR comment
**Date:** December 14, 2025 at 9:10 AM
**To:** comment@oceanoduneshcp.com

KO

Save the snowy plovers any way you can. Shame on State Parks for favoring vehicles over this endangered species. I48-1

Sent from my iPhone

# I49 Owen, Ellie

**From:** **Ellie Owen** eowen3648@gmail.com
**Subject:** Comments - Oceano Dunes District Habitat Conservation Plan (HCP) Recirculated Draft EIR
**Date:** January 23, 2026 at 12:51 PM
**To:** comment@oceanoduneshcp.com

EO

Please keep vehicles off the dunes to protect wildlife and native plants.
Ellie Owen
Sent from my iPad

I49-1

# I50 Palyok, Anne

**From:** **Anne Palyok** apalyok@gmail.com
**Subject:** Draft EIR comment
**Date:** December 13, 2025 at 10:20 PM
**To:** comment@oceanoduneshcp.com

AP

I am glad tge judge ruled in favor of the protection of the Plovers. I am glad to see a judge ruling according to the law.

I wouldn't think Plovers nest year round so why cant you close off those sections during nesting season?

Being a bird lover i hop you can reach conclusion that everyone will.be happy with.

Anne P

I50-1

# I51 Perez Salazar, Juan Manuel

**From:** **juan manuel perez salazar** artjmp@gmail.com
**Subject:** Re: response to Draft Habitat Conservation Plan for the California Department of Parks and Recreation Oceano Dunes District
**Date:** January 20, 2026 at 12:55 PM
**To:** karl kempton karlkempton99@gmail.com
**Cc:** comment@oceanoduneshcp.com

Nice letter well done. i hope they can see behound their thinking I51-1

Enviado con Gmail Mobile

El El lun, ene 19, 2026 a la(s) 10:50 a.m., karl kempton <karlkempton99@gmail.com> escribió:

# I52 Peters, Amy

**From:** **Amy** amy@amypetersstudio.com
**Subject:** Draft EIR comment
**Date:** December 14, 2025 at 8:19 PM
**To:** comment@oceanoduneshcp.com

Hello,
I've been a resident of the central coast for over 40 years now. I attended Cal Poly and was gone for only a few years while I finished my degree at Sf state. I had switched my major to metal arts and jewelry design and Cal Poly didn't offer that degree. In that time I was back home in Palo Alto, I volunteered at the 1990 Earth Day international headquarters for its 20th anniversary. While there I was responsible for reading letters from people around the world talking about environmental destruction, habitat and animal losses. One story in particular struck me and has stuck with me since then. The Exxon Valdez accident and its ramifications on nature and animals alike.

All of this to say… we don't have to have a disaster to know we are harming our wildlife by continuing to allow dune driving. So many beaches have been closed to driving around the world, it's time ours is as well. It's not just about the Snowy Plover, but they're endangered and once lost, they will be lost forever. In addition it's time to protect the habitat and environment for all of our creatures great and small. I believe the beauty of our area will continue to draw tourists without any losses of revenue. As a business owner here I know that is important but financial gains can't outweigh environmental impact. I52-1

While I am sympathetic to off roading enthusiasts the time has come for them to find a new place to explore and play without disturbing endanger species.

Amy Peters
Shell Beach, Ca

Sent from my iPhone

# I53 Porter, Charlie

**From:** **Charlie Porter** solitude2120@gmail.com
**Subject:** Draft EIR comment
**Date:** December 15, 2025 at 10:57 PM
**To:** comment@oceanoduneshcp.com

CP

Close the dunes protect the plover

I53-1

# I54 Rawls, Linda

**From:** **Linda Rawls** lindalulurawls@gmail.com
**Subject:** Draft EIR comment
**Date:** December 16, 2025 at 12:51 AM
**To:** comment@oceanoduneshcp.com

LR

Why would the state park rangers even think to open during nest season!!! Can't they wait!!! It's not rocket science!!! Then both would be happy i suppose.but i fully aggree they violated and they knew they did!!.. ty..Linda rawls..9518076335 **I54-1**

# I55 Righetti, Kristin

**From:** **Kristin Righetti** krighett@gmail.com
**Subject:** Draft EIR comment
**Date:** December 13, 2025 at 8:01 PM
**To:** comment@oceanoduneshcp.com

KR

Hello,
I am a resident of San Luis Obispo that enjoys walking the beach at Pismo as well as hiking in Oceano Dunes. I especially enjoyed my time there during Covid when vehicle traffic was halted and had hoped that would continue to be the case. This is an extremely fragile ecosystem that does not tolerate the type of abuse that the State Parks has allowed to occur. They have proven that they are not good stewards of this special place and certainly their actions regarding the Snowy Plover are deplorable. It is high time to step up protections for this little shore bird and the delicate area it calls home. I55-1
Thank you,
Kristin Righetti

Sent from my iPad

# I56 Rosczyk, Mary Lou

**From:** mlrscz@icloud.com
**Subject:** Draft EIR comment
**Date:** December 1, 2025 at 4:49 PM
**To:** comment@oceanoduneshcp.com

The core question is whether camping and OHV use, which have been historically allowed in Pismo State Beach and Oceano Dunes SVRA park units should continue to be allowed and even expanded. My answer to this question is absolutely NOT. There are many activities which were once allowed in California that are no longer legal or desirable. California's population demands that OHV use upon California/s precious beaches should be one of those activities. Additionally, beach camping should definitely be controlled and limited.

Federal and state listed or threatened species occur or potentially occur on these beaches. Among them are the Western Snowy Plover, California Least Tern and Tidewater Goby, as well as six listed plant species. Additional federally proposed or threatened species also occur in the area. The proposed mitigations for all of the Alternatives including the Preferred Alternative offer minimal protection at best and assured extirpation at worst for the animals and plants inhabiting California's beaches. The impact analysis for the Preferred Alternative states that "There are no significant unavoidable impacts." The key word in this statement is "unavoidable"—implying a necessary evil. I56-1

The California Coastal Commission stated that the Proposed Alternative presents inconsistencies as identified by the California Coastal Act and that these inconsistencies remain unresolved. In fact, the California Coastal Commission proposed "modifying park operations including but not limited to eliminating OHV use over a 3-year transition period." The Coastal Commission was sued by stakeholders in July 2023. They were successful and the California Court of Appeals upheld the stakeholders suit. However, the suit was upheld upon narrow procedural grounds NOT upon the merits of the suit.

There are plenty of other areas in California where OHV use and camping are allowed. In deference to California's threatened and endangered species, the beach should not be one of them.

Thank you for the opportunity to comment upon this important issue. I hope that you will give sufficient consideration to the plight of threatened and endangered species.

Respectfully,
Mary Lou Rosczyk
24435 Village Walk Place, #304
Murrieta, CA 92562

# I57 Ross-Leech, Diane

**From:** **Diane Ross-Leech** dianeleech@comcast.net
**Subject:** Draft EIR Oceano Dunes SVRA and Pismo State Beach HCP comments
**Date:** January 23, 2026 at 6:04 PM
**To:** comment@oceanoduneshcp.com
**Cc:** Diane Ross-Leech dianeleech@comcast.net

DR

Mr. Ronnie Glick, Senior Environmental Scientist
California Department of Parks and Recreation
Oceano Dunes District
340 James Way, Suite 270
Pismo Beach, CA. 93449

Dear Ronnie:

Thank you for the opportunity to review the Draft EIR (DEIR) for the Oceano Dunes State Vehicle Recreation Area (SVRA) and Pismo State Beach Habitat Conservation Plan (HCP). I am glad to see this DEIR and HCP proceeding towards completion and implementation. I have experience with developing and implementing complex, multi-species HCPs and they, for the most part, simplify operations tremendously and improve overall relations with the federal and state resource agencies. I57-1

The DEIR and HCP are very complex and detailed documents - which I reviewed. And I may not have understood or missed some details! So I have a few comments and questions listed below by topic.

Vehicle/OHV Access Points:
Oceano Dunes SVRA has a very complex regulatory environment with multiple federal, state and local jurisdictions that present potential overlap and conflicting direction. Recently, the CA Coastal Commission (as part of their oversight) has recommended changes to vehicle and OHV access points. If this request becomes a requirement, how will this affect HCP implementation? I57-2

CDF&W NCCP vs ITP:
Oceano Dunes SVRA has in place a Biodiversity Management Plan that was co-developed with the CA Department of Fish and Wildlife (CDFW). The EIR states that a Natural Communities Conservation Plan is under development in order to obtain Incidental Take Permits (ITP) for state listed species. I understand how challenging this process can be and wonder why individual species specific ITPs won't suffice for take coverage. I57-3

AMMs:
I believe I read that the HCP has about 580 Avoidance and Minimization Measures (AMMs)! Wow! I am curious what sort of overall compliance system will used to keep track of all the requirements and commitments for the HCP to make it "easy" for staff to successfully implement. And I know the HCP is not the only regulatory/compliance program that requires this rigor. I57-4

Pismo Lake:
I was surprised to read that Pismo Lake has no future development plan or access plan. Pismo Beach is a very popular state beach and I would hope that a plan to address this deficiency will be put forward in the near term I57-5

Leased Lands and Future Land Acquisition:
I understand that Oceano Dunes has many properties under lease from varying entities that are essential for the park. I also understand that there may be additional properties in the future that could be additions to the park. How would the HCP address these future land I57-6

future that could be additions to the park. How would the HCP address these future land additions? I57-6

Camping and Day Use Levels:
Over the last few years there have been changes to the capacity for Oceano Dunes day use and camping. Does the HCP have any impact or affect on day use or camping capacity? I57-7

Consultation Required for Exclosure Management:
The HCP includes discussion about changes to the snowy plover exclosures, including increasing, decreasing and enhancing management. What consultation is required for these activities? I57-8

Incidental Take Estimates:
I was surprised by the high numbers requested for the HCP incidental take. All of the estimates were listed as "worse case." As the HCP its implemented and a robust compliance system in place, it may be useful to true up the incidental take numbers to show the success of the HCP program and the AMMs. I57-9

Implementation Costs vs Status Quo:
I am interested in how the estimate for implementation costs compare to management costs today without the HCP. Does the HCP save money over time as staff get adjusted to the requirements and systems are in place to simplify compliance? Or does it cost more?!? I57-10

Resources Needed to be Successful:
Does the Oceano District have the support and resources needed to be successful, based on the detailed list? I57-11

Environmentally Superior Alternative:
I support the Environmentally Superior Alternative! I57-12

Thank you for the opportunity to ask my questions and clarifications.

Diane Ross-Leech

# I58 Ross-Leech, Diane

Comment from January 13, 2026, Draft EIR Public Comment Meeting

Diane Ross-Leech:

Question is, I think it makes total sense, I've been involved with multi-species HCPs as well in the past, to cover new activities and future activities. I just was questioning how the US Fish and Wildlife Services was reacting to those, if they're on board with that, or if that has been controversial? I58-1

# I59 Schechter, Madeline

**From:** **Madeline Schechter** madelineschechter@gmail.com
**Subject:** Public Comment Oceano Dunes DEIR & HCP
**Date:** January 14, 2026 at 6:53 PM
**To:** comment@oceanoduneshcp.com

MS

Dear Mr. Glick and the California Department of Parks and Recreation,

As a resident of the Central Coast, I find the DEIR and HCP inadequate, and they insufficiently address the environmental impacts of the Oceano Dunes State Vehicular Recreation Area. The DEIR and HCP fail to protect threatened species and mitigate impacts to public and environmental health. They clearly prioritize vehicle recreation instead of habitat conservation, not meeting the requirements of an HCP. I59-1

Please change the Draft EIR and HCP to include:

- Comprehensive analysis and consideration of the no-vehicle alternative;
- Decrease the allotted take of the Western Snowy Plover and ESA-listed species;
- Increasing the duration and number of protection measures, and return to year-round exclosures protecting the plover and California least tern.
- Include analysis of the environmental impacts of foreseeable potential future projects, including a southern entrance to the ODSVRA and development around Oso Flaco Lake.

I59-2

This matters to me because in my free time I spend a lot of time visiting Oso Flaco Lake and the Oceano Dunes to look for birds and hike. I also love to run on the beach and kayak/paddleboard in the ocean. The health of the ocean and our coastline directly affects my activities. When I was attending Cal Poly I was an intern for the Guadalupe Dunes Center, and I saw firsthand the devastation caused by vehicles on the dunes and beach. I love our coast and all the fun activties that come with it. I love all the birds and other wildlife that call these dunes home. I do not feel safe walking/running on the beach with vehicles driving on it. Please keep our beach safe and clean! I59-3

Thank you,

**Madeline Schechter, Templeton, CA 93465**

# I60 Sharpe, Peggy

**From:** **PeggyS** peggysharpe@yahoo.com
**Subject:** To State Parks: Protect Oceano Dunes from vehicles. They contaminate local air quality, and I am concerned about environmental and public health. Also-- we need to protect wildlife, e.g. western Snowy Plover. Thanks for your consideration in this important matter ! Peggy Sharpe, RN, PHN
**Date:** January 23, 2026 at 7:07 PM
**To:** comment@oceanoduneshcp.com

P

I60-1

# I61 Sherrie, Laurel

**From:** **Laurel Sherrie** laurelsherrie@gmail.com
**Subject:** Re: Protecting Snowy Plovers
**Date:** November 28, 2025 at 1:48 PM
**To:** comment@oceanoduneshcp.com

LS

I support this statement:
The Center for Biological Diversity celebrated the ruling. “The court’s ruling sends a strong message that California must finally safeguard the federally protected birds it has for so long ignored,” Center for Biological Diversity senior conservation advocate Jeff Miller said in a statement. “For decades, state officials have let off-road vehicles tear through endangered species habitat at Oceano Dunes, injuring and killing snowy plovers, harassing roosting flocks and degrading their habitat. This decision makes it clear that such neglect can no longer continue.”

I61-1

Please safeguard these protected birds and their environment.

Laurel Sherrie
Arroyo Grande

# I62 Sherry (full name unknown)

**From:** **Sherry** animalfriends2@gmail.com
**Subject:** Draft EIR comment
**Date:** November 24, 2025 at 8:18 PM
**To:** comment@oceanoduneshcp.com

S

Please don't let homes,etc on this wild land. The wild animals need this land. I62-1

# I63 Sherwood, John

**From:** **John Sherwood** jsherwd@gmail.com
**Subject:** Snowy Plover
**Date:** November 29, 2025 at 5:10 PM
**To:** comment@oceanoduneshcp.com

JS

No amount of death or harassment of endangered species is acceptable. The Snowy Plover should be protected to maximum extent. There is no excuse for recreational off road vehicles on these fragile coastal dunes. I63-1

John Sherwood
633 Greenleaf Canyon Road
Topanga, CA 90290
310/455-2771

# I64 Silas, Carolyn

**From:** **CJ Silas** dodgeherblue@gmail.com
**Subject:** Save the animals
**Date:** November 28, 2025 at 3:04 PM
**To:** comment@oceanoduneshcp.com

CS

Hello...
I am a local and have lived in Pismo Beach for 23+ years. I hope you will support the Endangered Species Act and STOP allowing vehicles to be on the Dunes in Oceano. If you can find a way to collaborate for the health and safety of the bird species, but, if not, CLOSE IT, please!!!!

I64-1

Carolyn Silas

# I65 Smith, Julie & Ray

**From:** **RAY SMITH** raynjulie1048@sbcglobal.net
**Subject:** Comments - Oceano Dunes District Habitat Conservation Plan (HCP) Recirculated Draft EIR
**Date:** January 21, 2026 at 6:23 PM
**To:** comment@oceanoduneshcp.com

RS

No oil drilling off the coast of California! I65-1

Julie & Ray Smith

# I66 Stiles, Kerry

**From:** **kerry stiles** kds_sr@att.net
**Subject:** Draft EIR comment
**Date:** November 25, 2025 at 11:03 AM
**To:** comment@oceanoduneshcp.com

KS

As an 87-year-old veteran, my family and I have, over the years, visited Pismo Beach for weekend enjoyment and driven out on the Oceana Dunes. Those visits are wonderful memories for me and our children, who are now older. My wife passed away in 2016, but we used to talk about going back for more visits. Please protect the wonderful area. I66-1

Kerry Douglas Stiles, Sr.

# I67 Telecetsy, Anestesia

A Telecetsy
2341 Fresno Stre
Los Osos, CA 93402



USA / FOREVER

Mr. Ronnie Glick
Senior Environmntl Scientist
California Dept. Parks + Rec
Oceano Dunes District
340 Tamp Way
Pismo Beach, CA 93449

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Dear Mr. Glick

As a resident of Los Osos, California who is proud of the beauty of the Central Coast, I am concerned that the DEIR + Habitat Conservation plan fail to have a vision that protects the ocean coast for non-vehicular recreation. I know the argument is that cars have to have someplace to drive on the beach. Do they? California is committed to 30x30 - We should protect habitat conservation. Oceano beach is any easy place to protect. It is good for Central Coast and good for California. Thank you Anastasia Telesetsky

167-1

# I68 Toti, Rachel

Dear Mr. Glick,

An Incidental Take Permit (ITP) **should not be issued** for ongoing activities in the Oceano Dunes District. This revised version does nothing to protect the California Least Tern and Western Snowy Plovers. In fact, it reduces the nesting area by 1/3.

More should be done to "benefit covered species, minimizing human alteration or disturbance of native habitats, reducing conflicts between covered species and park users, restoring native habitats, and monitoring the success of these efforts." Specifically, the number of vehicles allowed in the park should be reduced significantly; night riding should be stopped as it disturbs the nesting Terns and Plovers; all exclosures including the Foredune Project area should remain year around protection. I68-1

Pg. 4-47 of the draft Habitat Conservation Plan states regarding vehicle strikes and reduction of the nesting area "As a result, more SNPL will be vulnerable to vehicle strike due to the presence of vehicles on the shoreline. Chicks will be most vulnerable since they will be unable to fly out of harm's way. This could be exacerbated in conjunction with the Southern Exclosure reduction (section 2.2.5.11), which is predicted to result in some adult aggression/density issues and push additional chicks and adults out of the protection of the exclosure into the open riding area. "**This is not the way to protect a threatened species**. I68-2

Pg. 4-50 Describes the elimination of 1/3 of the WSP nesting area. "Eliminating the East Boneyard Exclosure (approximately 47 acres) and incremental elimination of 6 Exclosure (62 acres)50 could result in the loss of up to 109 acres of protected SNPL breeding habitat. This reduction represents approximately one-third of the 368 acres of SNPL breeding habitat currently protected by the Exclosures (300 acres in the Southern Exclosure and 68 acres in North Oso Flaco Exclosure). I68-3

The HCP notes, "Historical nest data indicates that between 25 and 97 nests have been established annually in the 6 Exclosure between 2005 and 2023; therefore, if the entire 6 Exclosure is removed, it could result in 75 to 291 chicks moving into the open riding area to forage where they are at risk of being struck by a vehicle." Pg. 4-52. This is unacceptable, and **NO reduction** in the 6 Exclosure should be approved. I68-4

Thank you for the opportunity to provide comments.

Rachelle Toti

Nipomo Mesa resident and birder

## Appendix C. Maps of all California least tern and snowy plover nest locations at ODSVRA in 2025.

**Figure C.1. California least tern and snowy plover nest locations at ODSVRA in 2025.**



# I69 Turner, Donna

**From:** **Donna Turner** caturners@outlook.com
**Subject:** Nighttime Riding at Oceano SVRA
**Date:** January 16, 2026 at 10:21 PM
**To:** comment@oceanoduneshcp.com

DT

Donna Turner
895 Auklet Ct., Arroyo Grande, CA 93420

Comments regarding the Oceano SVRA

My name is Donna Turner and I live in Arroyo Grande. My home is approximately 3 miles from the Oceano Dunes recreation area. I writing today about an issue that is negatively affecting my quality of life.

Since Jan. of 2025, riding on the dunes has been allowed **24 hours a day, every day, with no restrictions**. Prior to this change, riding was allowed only until one hour after sunset. I69-1

The points I wish to bring to your attention regarding this issue are these:

- I often hear the drone and revving of engines all day long, only to have the noise continue into the night. This means disrupted sleep, stress, and diminished quality of life. The sound studies that CA State Parks rely upon to determine what constitutes a noise violation does not capture what is actually being heard from bedroom windows in my neighborhood. Wind, weather, and the way sound travels across sand and open land all affect the level of sound I, and my neighbors, experience. The current methods used in sound monitoring are flawed and simply do not reflect the reality. If they did, I would not feel compelled to bring this attention to members of the Board of Supervisors.

- While I understand and respect that off-road recreation is part of California's beach culture, I would like to point out that no other recreational or transportation activity operates 24 hours a day without limits. Airports, concert venues, campgrounds, sports facilities, etc. all have curfews and quiet hours. I69-2

- Most importantly, every other California state park has quiet hours from 10pm to 6am. These established "quiet hours" are designed to ensure peace and restful nights for campers. Certainly, it is not unreasonable to expect that this courtesy be extended to those living in nearby areas.

I'm not asking to eliminate off-road riding — only that we bring its hours into alignment with other recreational uses.

Our coastal management plan should serve all members of our coastal communities — not just those who ride on the dunes with motorized vehicles. There are many who would enjoy the quiet of a beach walk at sunset but under the current conditions, that is not possible.

I ask that the California Coastal Commission consider a change to the operating hours at the Oceano SVRA. There are plenty of daytime hours for locals and visitors to enjoy riding on the dunes. The residents of neighborhoods in our coastal communities deserve to have peace and quiet during the evening and nighttime hours. These changes would be a fair and balanced remedy to this situation. I69-3

Thank you for considering a reasonable limit that supports both recreation and rest.

Regards,

Donna Turner

# I70 Varni, Charles

**From:** **Charles Varni** charles@varni.org
**Subject:** SVRA HCP Comments
**Date:** January 9, 2026 at 8:33 AM
**To:** comment@oceanoduneshcp.com

Comments on the State Parks 2025 Habitat Conservation Plan and its EIR for the ODSVRA.

HCP

The proposed Habitat Conservation Plan (HCP) for the Oceano Dunes – drafted by the California Department of Parks and Recreation (CDPR) to bring it into compliance with the Endangered Species Act by reducing the damage done to endangered species by off-highway vehicles (OHVs) has multiple problems, but they all come down to one: The persistent belief that the conservation plan mandated by the Endangered Species Act must "balance" the need to keep species from going extinct with the need to cater to the recreational preference of a particular interest group. I70-1

1. Endangered or threatened species

—This document totally ignores steelhead trout which live and spawn in Arroyo Grande creek.
—There is no discussion of the massive disappearance of razor clams from the intertidal zone. Much more vulnerable than Pismo clams to mortality from 8,000 lb vehicles compressing them while in shallow burrows, razor clams have significantly declined in the last ten years. This species was raised as a concern in 1982 when the original CDP was granted. Why is there no analysis of them?
—At lower tides huge beds of Pismo clams are exposed to vehicular traffic and State Parks does nothing to protect them from being crushed by vehicles weighing multiple tons
—-The request for increased "take" of Plovers and Terns is basically a "license to kill" endangered species.
The bottom line fact is that the SVRA is incompatible with the protection of ESHA and endangered species. I70-2

HCP EIR

8.3.1
**In addition, CDPR has determined the project would have a significant environmental impact related to recreation and public access in the project area if it would substantially limit, reduce, or interfere with established coastal recreational opportunities or public access.**

One of these things is not like the others. The real categories of projects that might have significant environmental impacts have nothing to do with any of the proposed measures to reduce the harms done to endangered species by motorized vehicles in the Oceano Dunes. But the CEQA guidelines state that the Threshold of Significance checklist "may be tailored to satisfy individual agencies' needs and project circumstances." Given an inch, State Parks has taken a mile, carving a loophole in this provision and driving a 40-foot toy hauler through it. Thus do actions involving "recreational facilities which might have an adverse effect on the environment" morph into a vague "environmental impact related to recreation," and the law protecting the environment somehow becomes a law protecting environmentally destructive activities. I70-3

Additionally, the EIR ignores the environmental, economic, and social injustice foisted on the community of Oceano by turning its beach into a road for motor vehicles. This has basically driven other types of pedestrian or aquatic recreation away from our beach and resulted in economic repression. Compared to neighboring beach cities like Pismo and Avila, Oceano has become a "sacrifice zone" for State Parks and the ODSVRA. Indeed, as the CCC staff has stated, "Oceano is the poster child for environmental justice on the California coast." Oceano deserves a vehicle free beach, even if the ODSVRA continues as such. I70-4

Charles Varni

25 year Oceano homeowner

# I71 Venditti, Karen

**From:** **Karen Venditti** kjvenditti@sbcglobal.net
**Subject:** ODSVR Habitat Conservation Plan Comments
**Date:** January 22, 2026 at 7:46 PM
**To:** comment@oceanoduneshcp.com

KV

I urge the Coastal Commission of reject the State Parks' proposed HCP, which provides the basis for U.S. Fish and Wildlife Service (USFWS) issuance of a 25-year permit authorizing incidental take of listed species under FESA.
In addition, I urge you to reject CDPR's efforts to take authorization from the California Department of Fish and Wildlife (CDFW) for species listed under the California Endangered Species Act (CESA).
The Central Coast, its people, its economy, and its future depends on protecting Oceano Dunes from off-road recreation. I71-1

Karen Venditti
1525 15th St.
Los Osos, CA 93402

# I72 Victorino, Chris

**From:** **Chris Victorino** cvic684@hotmail.com
**Subject:** Draft EIR comment
**Date:** December 14, 2025 at 11:59 AM
**To:** comment@oceanoduneshcp.com

The beach was used for off road recreation for 100 yrs. Unrestricted. The plovers are still there. Now the area for off road use is a small % of what it once was. The plovers are flourishing. The recreation dollars are a benefit to the local economy. What ALL govt agencies need to do is stand down and leave it the hell alone, or take another beating in court and go to prison for fraud and harassment of we the people that live here. Just drop it. Now. I72-1

Get Outlook for iOS

# I73 Webster, Mike

**From:** **Mike Webster** mjjwebster@pm.me
**Subject:** Oceano Dunes
**Date:** December 13, 2025 at 7:14 PM
**To:** comment@oceanoduneshcp.com

MW

I am STRONGLY opposed to ATV and off-road vehicle use in the Oceano Dunes.

It's been fantastic that the past few years have been ATV free in the dunes.

I am a very frequent user (hiking, birdwatching, running, picnicking) of Oso Flaco State Park, Guadalupe-Nipomo Dunes, and Pismo Beach (including the golf course). I've hiked the full stretch of this coast many times, in many seasons. I've noticed a significant improvement in the quality of my visits and uses of these state resources since the ATV ban went into affect. Including a substantial increase in the presence and health of snowy plovers. The dunes are a special place, with historical resources, natural resources and habitat, and an important natural space for the central coast and all of California. Use of ATVs in the dunes is a travesty, and inconsistent with the importance of the dune complex (which stretches from Pismo all the way to Mussel Point).

I have directly witnessed from multiple locations and directions, the substantial noise pollution caused by the ATVs. Oceano Dunes are no place for this type of noise. I73-1

I have directly witnessed from multiple locations and directions, the substantial erosion and damage to vegetation caused by ATVs travelling into all types of dune settings along this stretch of the coast. Including sections of the dunes that are supposed to be off limits.

I have directly witnessed from multiple locations and directions the clouds of fine particulates and exhaust that gets blown downwind of the dunes from ATV activities. Under certain conditions, the "clouds" of particulates and fine sand are clearly visible wafting over multiple parts of Nipomo and the mesa.

The fragile and ecologically significant area that encompasses Oceano Dunes is no place for ATV use. There are plenty of other more "compatible" uses for the public to enjoy these dunes.

Thank you for your attention to this matter.

Mike Webster
239 Valhalla Drive
Solvang, CA

(formerly of 422 Penelope Lane, Orcutt, CA)

# I74 Wheeler, Kelly

**From:** **Kelly Wheeler** kellyw530@gmail.com
**Subject:** Snowy Plover
**Date:** November 30, 2025 at 12:59 PM
**To:** comment@oceanoduneshcp.com

I'm dumbfounded. The Endangered Species Act is just for Endangered Species not Threatened!
Since the snowy plover population grew with existing off-road use, there should be no complaint. Yes some died, but how many exactly? If you say even one is too much then you don't live in reality because 40,000 people die each year due to Alcohol drivers, and it's not those drunk drivers dying just their victims, yet it is continued to be allowed!
The plovers are nesting IN the tracks, so where will they nest if off-roading is stopped? You want take away their natural habitat?! Natural selection will handle things, if they are bothered they'll move to somewhere they aren't! Or are you suggesting that there's no sand anywhere else!?
Someone is trying to justify their job, bored, or just trying to make a name for themselves! That's so wrong! I74-1

Respectfully,
Kelly

# I75 Williams, Darryl

**From:** **Darryl Williams** thehappymixer@gmail.com
**Subject:** Dunes
**Date:** December 13, 2025 at 11:26 AM
**To:** comment@oceanoduneshcp.com

Hello,
Birds and wildlife are facing ever shrinking habitat everywhere. We've reached a point where we are starting to see extinctions at an accelerated pace. While recreation is indeed good for us, its importance pales in comparison to protecting our disappearing wildlife. Especially since we have other options and animals do not.
Thank you.

I75-1

# I76 Woodbridge, Bill

**From:** **BILL WOODBRIDGE** billwoodbr@aol.com
**Subject:** Draft EIR comment
**Date:** November 24, 2025 at 10:38 PM
**To:** comment@oceanoduneshcp.com

BW

I am very opposed to the vast expanse of “dunes” beach/park area (5005 acres) that would allow “incidental take permits” for endangered species. That is WAY TOO BIG OF AN AREA to expose endangered species to death and disruption. I propose that you either cute the size of the area down to a maximum of 2000 acres (in the least sensitive areas), construct fencing to keep vehicles out of the sensitive areas, limit the number of vehicles using the area per day, or disallow the use of vehicles in the area at all. These vehicle owners can find other much less sensitive areas at which to operate their vehicles.

I76-1

Thank you,

Bill Woodbridge

# I77 Zajac, Peter

**From:** **Peter Zajac** peterfzajac129@gmail.com
**Subject:** Draft EIR comment
**Date:** December 15, 2025 at 3:38 PM
**To:** comment@oceanoduneshcp.com

PZ

The natural setting of the dunes must be protected. The birds are a small part of it but they are the critical issue. The dune buggy effort is strong and united. State parks are paid by our taxes and they must be held accountable. I am retired State empi of 30 years effort and never hv I violated my agency laws

I77-1

# I78 Anonymous

Subject: Public Comments re the Recirculated Draft EIR SCH# 2018011012

Please consider my comments regarding "Anticipated Significant Environmental Effects" in the notice dated November 24, 2025.

The draft EIR states in Paragraph 5.5 Mitigation Measures*:*

> ***"Impact AIR-1: The proposed reduction of the East Boneyard Exclosure and 6 Exclosure (CA50) could potentially change dune surface emissivity, increase dust generation, expose persons to substantial pollutant concentrations that lead to exceedances of PM2.5 and/or PM10 ambient air quality standards."***

In addition to harming the endangered birds by eliminating their nesting areas, the EIR acknowledges it would increase the PM10 and PM2.5 the public is exposed to.

Public records of the APCD Hearing Board meetings document findings reported by the Desert Research Institute, that the continued disturbance of the Oceano Dunes surface by OHV activities is a contributor to increased particulates being released from the dunes. I78-1

We oppose the opening of the East Boneyard and 6 Exclosure to OHV and other activities. In addition, both of these areas are located in the Southern-most portion of the park in close proximity to heavily populated housing areas and the city of Guadalupe. The likelihood of an increase in blowing particulate pollution is very high and will affect the residents.

Why then does the EIR propose to increase OHV activity in the Exclosure areas, which will add another 109 acres to riding, knowing what this will do to air quality?

Paragraph 5.5 of the EIR acknowledges the ongoing requirement for compliance with the Stipulated Order of Abatement, SOA 17-01. Both State Parks and the APCD are claiming a 40% reduction in particulate matter as a result of their efforts. However as we have repeatedly pointed out in public comments, this claimed reduction relies on the original SOA particulate matter measurement metric, that averages air quality readings over each 24 hour period. That metric, as acknowledged by the SAG, conceals midday exceedances that often occur between the hours of 1:00 to 5:00 pm on days experiencing high wind events. I78-2

Last year the SAG made a new metric available which samples air quality daily between the hours of 9:00 am to 6:00 pm. Use of this new metric will provide a more accurate measure of exceedances. If the new data shows an increase in exceedances, which we suspect it will, the EIR proposes to "control dust from another portion of the HCP area to achieve compliance with the SOA". Sounds good on paper but we are talking about human health impacts here.

Please reconsider the proposed plan to open more acreage to OHV activities at the expense of the endangered birds as well as humans who live downwind of the Oceano Dunes. I78-3