



March 12, 2020

Governor Gavin Newsom
1303 10th Street, Suite 1173
Sacramento, CA 95814

Dear Governor Newsom,

As you know per our previous correspondence, the Department of Parks and Recreation continues to draft a Public Works Plan (PWP) for the Oceano Dunes State Vehicular Recreation Area in San Luis Obispo County, scheduled to be submitted to the California Coastal Commission for approval in September. We write with some urgency to inform you of the progress of the PWP.

State Parks delivered a progress report at the February 13 meeting of the Coastal Commission. In our letter to you dated December 9, we expressed concern that “State Parks’ Public Works Plan...four months after the Coastal Commission required that it do so, still shows no sign of incorporating the 15 recommendations to improve management and operation of ODSVRA, listed in our Oct. 31 letter to you.”

We regret to report that, seven months after receiving instruction from the Commission, not only is the Public Works Plan still showing little sign of progress in meeting the basic requirements of the Commission for short-term remedies at the Oceano Dunes SVRA, a serious gap in understanding between the two agencies has come to light: Six months after receiving explicit directives from the Coastal Commission, DPR was denying that the Commission gave it instruction on the single most important long-term management issue that must be included in the Plan, which cannot be implemented without the Commission’s approval.

In a letter dated Dec. 13, 2019, the Commission’s Central Coast District Supervisor reminded DPR senior staff that at the July meeting, the Commission had found:

“that 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.’”

On Jan. 23, 2020, Parks Director Lisa Mangat wrote back, stating her 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."

We agree with the surmise of the Coastal Commission that State Parks may feel "caught between conflicting mandates, with the Coastal Act/LCP on one side, and the OHV statutes on the other." But if so, the analysis in the Commissions July 11, 2019, staff report is dispositive:

"On that point, it is important to note that that legislation...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 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."

The long history of the impasse with DPR that has resulted in more than three decades out of compliance with DPR's Coastal Development Permit and the County's Local Coastal Program presents substantial cause for concern in terms of how the current situation may be resolved.

State Parks has claimed that what they had agreed on as interim access points to the Park and a staging area have become de facto permanent solely by virtue of the fact that they have

not identified less damaging areas. A day-use carrying capacity study was undertaken that was inadequate and insufficient, and ignored the environmental justice impacts on the disadvantaged community of Oceano of using its main beach street as the primary vehicle entrance to the ODSVRA. Subsequently, a technical review team (TRT) team was supposed to realize the goals of a carrying capacity study but abandoned its charge to monitor vehicle numbers and conduct studies of their impacts on park resources. The TRT declined to review an alternative access study which failed to resolve the interim status of the entrance and staging areas. The TRT has now collapsed into irrelevance.

This single example from four decades of management and regulatory failures is an illustration of what has become standard operating procedure over the years at the Oceano Dunes SVRA. In light of this history, it is therefore a matter of special concern that Parks Director Lisa Mangat, at the Commission's Feb. 13 meeting, seven months after receiving explicit direction from the Commission, professed to be unsure as to "what exactly your comfort level is in terms of your sense of what's consistent with the Coastal Act."

It is clear to us that there is no possible alternative/compromise version of the Coastal Commission's directive to State Parks to start planning for a transition of the ODSVRA away from OHV use to other forms of public access and recreation.

We appreciate your statement that you are "listening and actively working on an actionable plan to address concerns raised by various groups" on Oceano Dunes issues. While Director Mangat has now promised the Commission that Parks "will be addressing what a phase-out of off highway vehicle recreation looks like" later this spring, we again urge you to intervene personally to ensure that State Parks is required to conform to the provisions of the Coastal Act and submit a Public Works Plan that includes a vision for the transition from OHV use to other forms of public access and recreation.

Anything less would not be acceptable if the state is to ensure the long-term preservation of the Oceano Dunes complex, one of the most unique and environmentally sensitive habitat areas on the California coast.

Sincerely,

Herbert Smith, Board Member
American Woodland Conservancy

Cynthia Replogle, Vice Chair
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