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January 9, 2014

BY EMAIL: dmcMahon@grover.org
Donna L. McMahon
City Clerk
154 S. Eighth Street
Grover Beach, CA 93433

**Re: Friends of Oceano Dunes' Comments Re Reconsideration By the
City Council of its Prior Approval of Coastal Development
Permit Application No. 10-03 (Grover Beach Lodge and Conference
Center, Applicant Pacifica Companies)**

Dear Ms. McMahon and City Council:

This firm represents the Friends of Oceano Dunes (Friends), a California not-for-profit corporation and watchdog association, representing approximately 28,000 members and users of the Oceano Dunes State Vehicular Recreation Area (SVRA). Friends represents businesses, environmentalists, equestrians, campers, fishermen, families and off-road enthusiasts who enjoy the benefits of public access to the coastal zone through responsible recreation at the Oceano Dunes SVRA. The proposed Grover Beach Lodge and Conference Center (the "Project"), will negatively impact public access to the coastal zone and Oceano Dunes SVRA.

This letter provides Friends' comments on the City Council's upcoming reconsideration, scheduled for hearing on January 21, 2014, of its prior approval of a Coastal Development Permit (CDP) for this Project. Friends requests that the City not approve a CDP for this Project until the issues raised in this letter have been adequately addressed.

Friends was formed in 2001 for the express purpose of "preserving and developing recreational uses" in the "Oceano Dunes area" of San Luis Obispo County. (See Articles of Incorporation submitted herewith.) Friends' members live near, use, recreate, visit and personally enjoy the aesthetic, wildlife and recreational resources of the dunes area, including hiking, exploring and observing wildlife. Friends is a public watchdog organization that has been monitoring the rule-makings and other governmental agency operations and activities that might affect this state park since 2001.

Oceano Dunes SVRA is a popular tourism facility for the City. See, *Goal LU-23: Create an identity for the City that will enhance its image as a tourist destination. Policies. LU-23.1. Promote the City's image.* ("The City will promote the City's tourist amenities including the Oceano Dunes State Vehicular Recreational Area") A 2006 study by State Parks reported that there were 2,076,000 visitors to SVRA in 2005. Holiday weekends show higher rates of visitation than the other times of year. "For example, Memorial Day Weekend 2004 saw an estimated 60,000 visitors to the park." (http://www.slostateparks.com/pdf/ODSVRA_Alternative_Access_Study.pdf, p. 11.)

Thus, the right of access to coastal areas and recreational opportunities addressed in these comments affect millions of people who travel to Oceano Dunes SVRA and the beach in the state park. The proposed Project's negative impacts on users of Oceano Dunes SVRA include:

1. Relocation and reduction in size and functionality of the long-standing staging area used by OHV/recreational vehicles (RV), enabling millions of people to access Oceano Dunes SVRA. This obstructs and impairs OHV users' access to the coast and recreational opportunities at SVRA.

2. Relocation and downsizing of the RV Dump Station resulting in traffic impacts and congestion, thus obstructing and impairing OHV users' access to the coast and recreational opportunities at the SVRA.

3. Increased traffic, congestion, impeded circulation and delays, including from the construction for this Project, thus obstructing and impairing OHV users' access to the coast and recreational opportunities at the SVRA. The Local Coastal Program (LCP) and Final Environmental Impact Report (FEIR) analysis is based on the assumption that LCP measures fully implemented. However, the City's LCP apparently never implemented Department of Transportation traffic management strategies for Grand Avenue to reduce present and future conflicts between design capacity and peak use demand. Moreover, even assuming this new standard was operative, the Project did not adequately consider the impacts of the West Grand Avenue Master Plan or evaluate the Project under these new standards.

In sum, the Project impairs public access by OHV users by failing to address adequately traffic and vehicle circulation impacts, in part by failing to address congestion generated by this Project. This will result in delays entering and exiting the SVRA, and obstruct and impair public access to the dunes, beach and shoreline at Oceano Dunes SVRA in violation of the City's LCP, the Coastal Act and the California Constitution.

The public access and recreation issues raised in these comments are important to the continued vitality and functionality of Oceano Dunes SVRA because the Project area is located at one of the main entrances to the SVRA.

1. The Project As Proposed Violates Constitutional, Statutory and LCP Standards

1.1 Article X, Section 4 of the California Constitution mandates maximum public access to the coast and recreational opportunities in the coastal zone.

The California Coastal Act, Public Resources Code, § 30210 states that "carrying out the requirement of Section 4 of Article X of the California Constitution" requires "maximum access" and "recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse." The Coastal Act requires that "[e]ach local coastal program prepared pursuant to this chapter shall contain a specific public access component to assure that maximum public access to the coast and public recreation areas is provided." Public Resources Code § 30500(a).

The Legislature made it clear that "[n]othing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution" that provides the public with a "constitutional right of access." Public Resources Code, § 30214(b). Maximizing public access to the coast and maximizing public recreational opportunities in the coastal zone are one of the core principles of the Coastal Act. Public Resources Code § 30001.5(c); See also, §§ 30220-30224 re recreational use priority.

The City's LCP, *Section 5.1. Introduction for the Public Access and Recreation Component*, recognizes that "[p]rovision of coastal access was a primary concern of California voters who approved the Coastal Zone Management Initiative in 1973." The Legislature made it clear that even legislative authorization of a development cannot impair these public access rights. Public Resources Code § 30211. ("Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.") The Legislature made it clear that "Nothing in this division shall be construed to authorize any local government, or to authorize the commission to require any local government, to exercise any power it does not already have under the Constitution and laws of this state or that is not specifically delegated pursuant to Section 30519." Public Resources Code § 30005.5. And, to achieve and protect the public's rights, "This division shall be liberally construed to accomplish its purposes and objectives." Public Resources Code § 30009.

1.2. The public's access and use rights are so important that the Legislature expressly established that in this Project "[d]evelopment will not impact the resources or the public's use of the state park." Public Resources Code § 5003.02.1(b)(3).

Thus, any development ultimately approved must ensure that public access to the park is not obstructed or impaired.

2. The CDP Under Reconsideration by the City Exceeds its LCP Standards Mandating Maximizing Public Access to and Along the Coast and Maximizing Public Recreational Opportunities in the Coastal Zone.

The City's LCP recognizes the importance of this Constitutional mandate in *LCP 5.5 Conformance with Coastal Act Policies. 5.5.1.A. Maximum Access and Recreation Opportunities*. "Section 30210 of the Coastal Act is the most comprehensive of the Act's policies concerning shoreline access and recreation. For this reason, in order to determine the extent to which the City and the California Department of Parks and Recreation are or are not in compliance with this policy, several points will need to be addressed." The first point relates to maximum access and specifically at the ramp entrance to the SVRA:

"A. MAXIMUM ACCESS

Provision of "maximum access" to the shoreline is, of course, one of the cornerstones of the Coastal Act. There are points of access to various interconnected parts of Pismo State Beach and the adjoining Vehicular Recreation Area. One of these accessways, the ramp entrance which lies at the foot of Grand Avenue, is located within Grover Beach limits." LCP 5.5 Conformance with Coastal Act Policies. 5.5.1. Maximum Access and Recreation Opportunities, A. Maximum Access. "The Grand Avenue ramp provides beach access for approximately 51 percent of the beach's visitors."

LCP, 5.2.2 BEACH ACCESS.

The City's LCP amendment certified by the Commission (with modifications to Chapter 5 Public Access and Recreation Component and Chapter 6 Public Works)¹ requires this Project to ensure that visitors to Pismo State Beach are provided "public recreational access services:"

"The City shall ensure that visitors to the Pismo State Beach are provided with easily accessible visitor-serving commercial and public recreational access services, particularly those relating to provision of food and lodging and beach related uses, in any new

¹ (Commission Staff Report June 2013) <http://documents.coastal.ca.gov/reports/2013/6/F10a-6-2013.pdf>) Chapter 5 Public Access and Recreation Component, 5.7 Recommendations, F. Private Visitor-Serving and Recreational Facilities, 1. Policies, a.

development in the Coastal Planned Commercial area west of Highway 1."

The public's rights are so important that the Legislature further provided that "[d]evelopment [of the Project] will not impact the resources or the public's use of the state park." Public Resources Code § 5003.02.1(b)(3).

Public access to the coast and to recreational opportunities are not maximized, but instead are impaired because the proposed Project obstructs and impedes access by eliminating the long-standing and well-functioning staging area and by ignoring the operational needs of OHV users of a park established specifically under state law for their recreational uses.

3. The Law Requires Protection of Existing and Future Public Access and Recreational Opportunities at Oceano Dunes SVRA.

The California Coastal Commission (Commission) recognizes that coastal resource constraints include not only environmental constraints, but also protection of public access and recreation. California Coastal Commission, *Draft Sea-Level Rise Policy Guidance* (October 14, 2013) ("In addition, designing to meet FEMA requirements may be in conflict other resource constraints, such as protection of visual resources, community character, and public access and recreation."), p. 70.

The constraint of public access and recreation as applied to this case needs to be evaluated to determine how the Project impacts existing public access and recreation. The Commission's *Draft Sea-Level Rise Policy Guidance* sets forth how the "Coastal Act requires that development avoid impacts to coastal resources" (p. 71). "*Public access and recreation resources include lateral and vertical public accessways, public access easements, beaches, recreation areas, public trust lands, and trails, including the California Coastal Trail.*" (p. 73, emphasis added.) One part of the coastal resource analysis is to "Identify locations of the proposed project site that can support development without encroachment onto the existing or future locations of these access locations." (Id.)

Section 30211 of the Public Resources Code mandates that "development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation." Section 30221 provides that "oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area." Further, "[d]evelopment will not impact the resources or the public's use of the state park." Public Resources Code § 5003.02.1(b)(3).

Any CDP application for development should evaluate both historical access on the site and impacts to existing and future public access and recreation from the proposed development. Development should not impede any public

access rights that exist and should provide for continued public recreational use of the site.

4. The CDP Under Reconsideration Exceeds Applicable LCP standards by Relocating, Adversely Impacting and Decreasing Recreational Support Facilities, Including the OHV/RV Staging Area and RV Dump Station That Are Essential for Unimpeded Coastal Access and Recreational Opportunities at Oceano Dunes SVRA.

Recreational support facilities are instrumental to providing access to the SVRA and its unique recreational uses. The LCP recognizes the importance of recreational support facilities and how even visual appearance can make the facilities not inviting to park visitors:

"5.5.2 RECREATIONAL SUPPORT FACILITIES

Public restrooms, picnic area, and a large off-beach parking lot are located at the end of Grand Avenue near the entrance station to the beach. *These support facilities were previously identified as serious needs. Currently, lack of landscaping, however, makes this area not very inviting to visitors.*" (Emphasis added.)

LCP 5.7 Recommendations. D. Recreational Support Facilities requires that the City "[e]nsure that adequate parking and other recreational support facilities are available to the public." (Emphasis added.) *Policy 1.a of LCP 5.7 Recommendations. D. Recreational Support Facilities* indicates that "support facilities" include "public amenities, such as parking and additional public restrooms." *LCP 5.7 Recommendations. D. Recreational Support Facilities. 2. Actions. b.* states that "[e]xisting and future sanitation stations shall be well signed in the vicinity of the beach and on all coastal access routes. The provision of the existing public dumping station with sewer services by the San Luis Obispo County Sanitation District should be facilitated to make more hours of station service economically feasible." *LCP 5.7 Recommendations. A. Maximum Access. 1.a Policy mandates* development shall not obstruct access to the dunes, beach and shoreline:

"No future development shall be permitted which obstructs access to the dunes, beach and shoreline from Highway 1 within the City limits. New development west of Highway 1 shall provide access to the dunes, beach and shoreline if adequate access does not already exist nearby."

The OHV Staging Area and the RV Dump Station are recreational support facilities that are relocated, downsized and rendered ineffective by the proposed Project. The absence of adequate facilities will mean frustration, delay, congestion, and thus obstruct visitors from accessing the unique coast and public recreational activities.

State Parks has allowed a staging area on the proposed Project site for OHVs/Recreational Vehicles (RVs) and equestrian staging since 1982. Yet, the

proposed new staging area discussed in the FEIR describes the relocation and creation of a new staging area for horses only and is silent about staging facilities for OHVs/RVs.

In terms of capacity, use and traffic, the proposed staging area is based only on how many horse trailers use the staging area, and thus the total use/capacity will be less than a capacity/use that also factors in RV/OHV users:

"Current use is estimated to be an average of five horse trailers at any one time on the property, although as many as 12 horse trailers at any one time have been counted on the site." [FEIR, Executive Summary, p. ES-11; FEIR, Chapter 2, Project Description, p. 2-20]

"A daily average of five horse trailers have parked on the site during a State Parks survey conducted during 2010." [FEIR, Chapter 4.8 Transportation-Traffic, p.4-151]

In terms of use and maneuverability, the staging area design is based only on the size, length and width of horse trailers:

"The applicant has included, in the proposed equestrian staging area, pull-through parking spaces with sufficient room to unload horse trailers in the proposed equestrian staging area, located south of West Grand Avenue in an area currently in disturbed dune habitat. The area would accommodate approximately 10 to 15 trailers, depending on size and configuration." [FEIR, Executive Summary, p. ES-11; FEIR, Chapter 2, Project Description, p. 2-20]

The area identified to offset the staging area is too small and thus will not accommodate large RVs (65' in length), and busy weekends will require more space for equestrians and OHV access. The Project does not provide the space needed for RVs and trucks towing off-highway vehicles or horse trailers to unload and turn around. Instead, the Project proposes to provide large vehicle parking by allowing larger vehicles to use "two stalls" in a pull-through parking space/stall, which will not work because the length of the pull-through is only 40 feet and large vehicles will not be able to circulate through the area because the turning radiuses are too sharp.

This Project also proposes to relocate a RV dump station to join an existing RV dump station that will *decrease availability of this recreational support facility* by causing or contributing to more traffic congestion and further impede public access to the coastal zone and is located in an area near or adjacent to wetlands that will preclude future expansion when needed in violation of the LCP recreational support facilities provisions discussed above. And, the campground may need to be reconfigured. This violates § 30212.5: "Wherever appropriate and feasible, *public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.*" (Emphasis added.) This also violates one of the basic goals for the coastal zone: "Assure orderly, balanced

utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state." Public Resources Code § 30001.5(b).

Relocating the RV dump station means all RVs will need to use Highway 1 through Butterfly Grove, which will cause congestion, particularly on peak times, such as busy weekends, and there are no large gas stations on Highway 1. In terms of the RV dump station, the larger vehicles (65' in length) will not be accommodated:

"This traffic would be rerouted to the North Beach Campground and would use the entrance off of Highway 1. This entrance features about 600 feet of storage for northbound left turns into the park entrance which is *sufficient for 20 25-foot RVs* including 5 feet between each vehicle. This storage will be more than enough to handle the current RV and trailer users and the displaced users from the Grover Beach state park area." [FEIR, Chapter 4.8 Transportation/Traffic, p. 4-160 (emphasis added).]

This lack of functionality for both the RV dump station and the staging area does not maximize access to the coast and recreational opportunities, negatively impacts the public's use of Oceano Dunes SVRA (see. e.g. Public Resources Code § 5003.02.1(b)(3)), and obstructs access to the park because OHV users can not access the park designed for them when they are not provided adequate and functional recreational support facilities.

5. The CDP Under Reconsideration Fails to Comply with the LCP's Standard of Maximizing Public Coastal Access By Allowing the Project to Obstruct and Impair Access to the Dunes, Beach and Shoreline As a Result of Project Created Traffic Impacts, Circulation Impacts, and Congestion, Including Construction Work.

The City's LCP, which was recently amended for this Project, did not change the findings in its LCP that traffic, congestion and capacity is already an issue for the SVRA access points and surrounding areas. *LCP 5.5 Conformance with Coastal Act Policies. 5.5.1. Maximum Access and Recreation Opportunities, A. Maximum Access.* discusses the maximum access mandate in the context of SVRA ramp entrance, which is the "*most intensively used of the access points, serving over 50 percent of the beach's visitors each year,*" and "*At peak use periods the ramp sometimes becomes congested and contributes to traffic congestion farther inland on Grand Avenue and Highway 1.*" (Emphasis added.) *LCP 5.7 Recommendations. A. Maximum Access. 1.a Policy mandates* development shall not obstruct access to the dunes, beach and shoreline:

"No future development shall be permitted which obstructs access to the dunes, beach and shoreline from Highway 1 within the City limits. New development west of Highway 1 shall provide access to

the dunes, beach and shoreline if adequate access does not already exist nearby."

See also Public Resources Code § 5003.02.1(b)(3).

Consistency with the LCP requires that the Project protect existing public access to the coast and not obstruct access. Chapter 5 Public Access and Recreation Component, 5.7 Recommendations, F. Private Visitor-Serving and Recreational Facilities, 1. Policies, 6, recently amended, requires road access to the project and to the beach area be "facilitated:"

"(6) Ingress/Egress. Road Access to the project shall be from Highway 1, Le Sage Drive and Grand Avenue and shall be designed in such a way as to facilitate all forms of access to the project and to the beach area (including vehicular, pedestrian, bicycle, etc.). "

Recently amended Chapter 6 Public Works Component, 6.4 Circulation, describes Grand Avenue as one of the three major streets that provide public access to the City's portion of the coastal zone (in Section 6.4.1 Existing System, A. Streets), highlighting the existing conditions of limited road access to the beach and existing condition of congestion before the additional traffic and visitor usage contributed to by this Project in the future:

"Grand Avenue: Grand Avenue is primarily a commercial street. In addition to serving commercial needs, Grand Avenue provides access to Pismo State Beach for both local residents and out-of-the-area beach visitors.

...This portion of Grand Avenue near the ramp entrance is often critically congested at peak use periods, particularly when high tides hinder access and egress of beach visitors in vehicles." (Emphasis added.)

Section 6.6.3 Circulation describes peak traffic flows, capacity and congestion at the SVRA entrance and coastal access roads at peak and nonpeak time periods:

"1. The three major coastal access routes presently serving Grover Beach's portion of the Coastal Zone are North Fourth Street, Grand Avenue, and State Highway 1.

3. On Grand Avenue west of Fourth Street peak traffic flows presently occur at 35 percent of the street's design capacity.

4. Highway 1 north of Grand Avenue carries a peak traffic flow of 83 percent of its design capacity and south of Grand Avenue, only 50 percent of its capacity.

5. The distribution of average and peak demands among recreational, residential, commercial, and industrial uses differs slightly for each of the three coastal access routes. *However, recreational demand at peak periods is high on all parts of the three coastal access routes.* Neither local or commuter traffic competes heavily with recreational demand at peak use periods.

6. On-street, free public parking is permitted south of Ocean View Avenue on North Fourth Street, and on Grand Avenue to within 680 feet of the end of the street. *This area experiences significant congestion during peak use periods.* No parking is permitted on Highway 1 within the City limits.

7. Traffic on Grand Avenue is not expected to exceed design capacities, during peak use periods, at City build-out.

9. Traffic on Highway 1 north of Grand Avenue, is also expected to exceed design capacities, during peak use periods, at City build-out. The State Department of Transportation has previously proposed to widen portions of the Highway to provide emergency parking and to increase pedestrian and cyclist safety." (Emphasis added.)

Section 6.7.3 *Circulation* provides some actions and policies that focus on mitigating traffic congestion and circulation. One action recommends implementing management strategies to reduce conflicts between capacity and peak use, an action also recommended in the LCP in 1999 and not changed in this amendment:

"2. Action: In cooperation with the California Department of Transportation, Transportation Management Strategies recommended by the State for Grand Avenue should be implemented to reduce present and future conflicts between design capacity and peak use demand on this street."

The Project and CDP fail to meet these standards.

First, the LCP and FEIR analysis is based on the implicit assumption that LCP measures have been fully implemented. However, the City's LCP never implemented Department of Transportation traffic management strategies for Grand Avenue to reduce present and future conflicts between design capacity and peak use demand. The Project contributes to additional traffic beyond that anticipated by the LCP, creating traffic congestion in the area that exceeds LCP standards and baseline.

Even if one could argue that the Project analysis assumes that the DOT transportation management strategies have been subsumed by the Circulation Element and the West Grand Avenue Master Plan, such an assumption would be

unlawful because it de facto changes the standard of implementation outside the required LCP amendment process. See, e.g. Public Resources Code § 30514. See, e.g., City of Grover Beach General Plan, Circulation Element (2005), Part D-Circulation Issues of Concern, pp. 25-27, and City of Grover Beach, West Grand Avenue Master Plan (2011), see, e.g., pp. 9, 17, 60.

Even assuming this new standard was somehow operative, the Project did not adequately consider the impacts of the West Grand Avenue Master Plan or evaluate the Project under these new standards. Moreover, the *Grand Avenue Master Plan* itself reduces the ability of users and visitors of Oceano Dunes SVRA to maneuver the large RVs down Grand Avenue since the plan contains many flow restrictions, including street width reduction and roundabouts.

The Section 6.7.3 *Circulation* also provides policies, which is what Friends has been requesting throughout this process for this Project, to resolve the adverse impacts on public access and recreational opportunities:

"4. Policy: To protect public access to the shoreline and reserve limited road capacity for coastal priority uses, development shall be required to identify and appropriately offset all circulation impacts, with preference given to mitigation measures designed to improve public recreational access and visitor-serving circulation.

5 Policy: All development shall be sited and designed to maximize public recreational access opportunities, including through providing meaningful and useful connections to and from roads, trails, and other such facilities and areas that provide access to and through the City's coastal zone and along the shoreline. Development shall accommodate all modes of circulation (including vehicular, pedestrian, bicycle, etc.) in a way that facilitates and enhances public recreational access to and along the shoreline." (Emphasis added.)

Instead of facilitating and enhancing the existing public access and recreational opportunities, the Project has proposed or relies upon measures that have not been implemented (and are not planned to be implemented) or will make access worse for the OHV users of Oceano Dunes SVRA. The Project does not provide adequate facilities for RVs at the OHV/RV staging area or at the RV Dump Station, and both are support facilities needed for recreational use of the SVRA.

6. The Size and Scale of the Project Is Inconsistent with the LCP.

The issues raised by Friends (recreational support facilities needed to use the SVRA and traffic congestion/circulation) show that the size and scale of the Project is not consistent with the Coastal Act, the City's LCP and the California law, e.g., the requirement that "[d]evelopment will not impact the resources or the public's use of the state park." Public Resources Code § 5003.02.1(b)(3). In order to make room for the Project's structures, the recreational support facilities currently used by visitors to access the Oceano Dunes SVRA were relocated, such

as relocating the current RV dump station located on the Project site to a new location off site. The result is that in terms of the coastal resource constraints of existing and future public access and recreation, this Project does not provide for maximum access, but frustrates, obstructs and impedes public access and recreational opportunities mandated by the California Constitution, the Coastal Act and the City's LCP. If the Project cannot accommodate these public access and recreational resource constraints, then the size and scale of the Project should be decreased to make room for existing and future public access and recreational opportunities.

The Commission recognized in its comments to the draft EIR attached to the FEIR that the "City should analyze whether the proposed project provides for *maximum public access*." [FEIR, Chapter 9, p. 9-19 (emphasis added).] The Commission recognized that "increased vehicle congestion" is one of the negative impacts that affect public access. FEIR, Chapter 9, p. 9-19. Specifically, "[t]o be consistent with the LCP and the Coastal Act, the *project must protect existing public access to the coast*, which, at this location, relies heavily of vehicle access via Highway 1." [FEIR, Chapter 9, p. 9-18 (emphasis added).] Existing public access also includes the recreational support facilities that visitors to Oceano Dunes SVRA use in order to access the park, such as the staging area, and the RV dump station. The Commission concluded that a "smaller and/or different project may be necessary to accommodate the site resource constraints." [FEIR, Chapter 9, p. 9-19.] The Project Applicant appears to agree that there are some inconsistencies: "The project appears mostly consistent with the City's LCP, specifically with regard to the guidelines in the LCP related to size and scale." [FEIR, Chapter 9, p. 9-28.]

For these reasons, the Project fails to conform to the LCP as well as public access mandates and policies under the Coastal Act and the California Constitution, that are key to ensuring that the Oceano Dunes SVRA remains a functional and pleasurable experience for the millions of visitors each year, an interest shared by the City and Friends. Thus, Friends requests that this CDP under reconsideration not be approved until these issues are addressed. In this regard, Friends is willing to discuss and work with the City to obtain resolutions of these issues.

Sincerely,

/s/

Tom Roth

Subject: 1-21-14 Permit Application 10-03 - Pacifica Companies

From: deah rudd

Sent: Monday, January 20, 2014 3:25 PM

Subject: 1-21-14 Permit Application 10-03 - Pacifica Companies

From: Deah Rudd, 1189 Mesa View Dr., Arroyo Grande, CA 93420

TO: Grover Beach City Council

Date: 1-20-14

Re: Development Permit Application No. 10-03; Applicant - Pacifica Companies
Agenda Item on 1-21-14

Dear City Council Members,

In reconsidering the request for approval of a Coastal Development Permit and Site and Architectural Plans to be on the agenda on 1-21-14, in considering the redesign of the parking lot for the Grover Beach Lodge, etc., I would like to bring to your attention the following information concerning the equestrian parking unique features needs within the parking lot to enable that area to be used for equestrian trailer parking and staging. They are as follows:

A. Most trucks pulling horse trailers are extended cabs or extra cabs and require a large turning radius - larger than for cars and for a regular cab truck and need more room to maneuver through a regular car parking lot.

B. Horse trailers vary in length from a minimum of 13 feet to 24 feet (on the floor of the horse trailer not counting the tongue if it is a pumper pull trailer) in addition to the truck which can measure 22 feet.

C. Approximately 10 feet is required behind the trailer to unload and load a horse into the trailer.

D. Approximately 8 feet is required on the side of the trailer to tie the horse to saddle the horse.

E. Signage on the asphalt in large letters is necessary: "Reserved Equestrian trailer Parking only."

F. There needs to be signage as well that states: "All others will be towed."

G. The triangle piece reserved for equestrian parking needs to be outlined on the asphalt in white to delineate the area.

H. The average trailer turning radius is 40 feet and islands need to be short enough to allow trailers to turn through the parking lot and exit if there is only one entrance.

I. The entrance to the parking lot should be wide enough to accommodate a dually truck and 8 foot wide horse trailer to pull in and through.

J. A pull through design would work best.

K. The Equestrian Committee provided a list of turnaround dimensions to Bob Perrault at a meeting a couple of years ago.

L. Another copy of that study is needed it can be forwarded upon request.

Thank you,

Deah Rudd

5-710-2739

Subject: Pacifica Companies Agenda Item

----- Original Message -----

From: Nora Jenae

To: Linda Clarke

Sent: Monday, January 20, 2014 8:34 PM

Subject: Pacifica Companies Agenda Item

To: Grover Beach City Council

RE: Development Permit Application No. 10-03

TO: Grover Beach City Council

Date: 1-20-14

Re: Development Permit Application No. 10-03; Applicant - Pacifica Companies
Agenda Item on 1-21-14

Dear City Council Members,

When I read your notice, I did not see any reference to Equestrian Parking being included in the plans. I am extremely concerned it will be dropped, making it practically impossible to continue taking our horses to the beach as has been done for so many years. Many people with horses meet at the beach regularly for fun and fellowship. Please please do not allow our pleasure at the beach to be disrupted.

Equestrian parking has very specific things to be included:

- a. Horse trailers vary in length from 35 feet to 46 feet in addition to the truck, which can measure 22 feet.
- b. About 10 feet is required behind the trailer to unload and load a horse into the trailer and on either side to handle the horse.
- c. Equestrian Parking needs to be plainly identified and enforced as well to be consistently available.
- d. The normal equestrian rig has a turning radius of an unobstructed 40 feet to allow trailers to enter, maneuver safely through the parking lot and exit.

The Equestrian Committee provided a list of turnaround dimensions to Bob Perrault at a meeting a couple of years ago.

Sincerely

Nora Jenae'

Kitt Jenae

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March 3, 2014

BY EMAIL: dmcMahon@grover.org
Donna L. McMahon
City Clerk
154 S. Eighth Street
Grover Beach, CA 93433
Ph: (805) 473-4568
Fax: (805) 489-9657

**Re: Friends of Oceano Dunes' Supplemental Comments Re Reconsideration
By the City Council of Prior Approval of Coastal Development Permit
Application No. 10-03 (Grover Beach Lodge and Conference Center,
Applicant Pacifica Companies)**

Dear Ms. McMahon and City Council:

This firm represents the Friends of Oceano Dunes (Friends), a California not-for-profit corporation and watchdog association, representing approximately 28,000 members and users of the Oceano Dunes State Vehicular Recreation Area (SVRA). Oceano Dunes SVRA is a popular tourism facility and amenity for the City, attracting millions of visitors annually. Thus, the right of access and recreational opportunities addressed in these comments affect not only members of Friends, but the public as well.

The proposed Grover Beach Lodge and Conference Center (the "Project") will negatively impact public access to the coastal zone and Oceano Dunes SVRA. Friends submitted comments in a letter of January 9, 2014, and the issues raised in that letter remain unresolved. This letter provides additional comments after reviewing the 2014 Staff Report and Draft Resolution to approve a Coastal Development Permit (CDP) for this Project at the March 3rd City Council meeting. Friends requests that the City deny approval of the CDP for this Project until all the issues raised by Friends have been adequately addressed.

Friends is a not-for-profit public benefit corporation and association representing users of Oceano Dunes SVRA, and is the only entity exclusively representing the interests of OHV users and visitors to the park. According to its Articles of Incorporation,

Friends was formed for the express purpose of preserving and developing recreational uses in the Oceano Dunes SVRA area of San Luis Obispo County. [Declaration of Joel Suty, (Suty Decl.), para 2] Friends represents businesses, environmentalists, equestrians, campers, fishermen, families and off-road enthusiasts who enjoy the benefits of public access to the coastal zone through responsible recreation at the Oceano Dunes SVRA. Friends is dedicated to ensuring continued access to the beach and dune areas at Oceano Dunes SVRA for the park's statutorily dedicated use for OHV as authorized under Public Resources Code, § 5090 et seq. [Suty Decl., para 2] Friends' members live near, use, recreate, visit and personally enjoy the aesthetic, wildlife and recreational resources of the dunes area, including hiking, exploring and observing wildlife. Friends' members are frequent users of Oceano Dunes SVRA, visiting several times a year to enjoy the recreational elements unique to the beach and dune setting at the park. [Suty Decl., para 3] For decades, one member and his family have enjoyed Oceano Dunes SVRA each year and intend to continue to frequent the park in the future. [Suty Decl., para 3] Friends' members regularly engage in recreational activities at Oceano Dunes SVRA. [Suty Decl., para 3] Thus, Friends' members have practical experience in accessing and using Oceano Dunes SVRA for recreational opportunities.

The 2014 Staff Report for this Project on the agenda for the March 3, 2014 City Council meeting requests that the City Council conduct a public hearing to reconsider its previous approval of a CDP for the Grover Beach Lodge and Conference Center. Staff either dismisses Friends' concerns, or erroneously believes that Friends' issues have been resolved.

The 2014 Staff Report concludes that the issue raised by Friends in its administrative appeal to the California Coastal Commission regarding maximizing rather than obstructing public access to the coast and dunes has been addressed by the Final EIR that analyzed traffic impacts. [2014 Staff Report, pp. 3-4] However, the 2014 Staff Report did not address the West Grand Avenue Master Plan or that the City's LCP never implemented Department of Transportation's traffic management strategies for Grand Avenue to reduce present and future conflicts between design capacity and peak use demand. Moreover, the City's LCP, which was recently amended for this Project, did not change the findings in its LCP that traffic, congestion and capacity are already an issue for the SVRA access points and surrounding areas. *LCP 5.5 Conformance with Coastal Act Policies. 5.5.1. Maximum Access and Recreation Opportunities, A. Maximum Access.* discusses the maximum access mandate in the context of SVRA ramp entrance, which is the "most intensively used of the access points, serving over 50 percent of the beach's visitors each year," and "At peak use periods the ramp sometimes becomes congested and contributes to traffic congestion farther inland on Grand Avenue and Highway 1."

In addition, the 2014 Staff Report concludes that relocation of the sewer dump station to a new site is the "most appropriate and easily accessible site" based on the opinions of the Joint Authority and State Parks as well as the staff's conclusion that the Final EIR determined that the relocated dump station would provide "adequate access." [2014 Staff Report, p. 4] However, the Joint Authority and State Parks do not have the benefit of the practical experience of the dump station's actual users, which include

members of Friends who are part of the many users/tourists who travel to Oceano Dunes SVRA, and thus have erroneously concluded that the access would be adequate. [2014 Staff Report, p. 4]

Indeed, the 2014 Staff Report implicitly recognizes that access may be inadequate:

"The Joint Authority is proceeding with preparing a Coastal Development Permit application for submission to the City of Pismo Beach for approval of the expansion of the existing sewer dump station. *However, this does not preclude the Joint Authority from considering other viable locations for the sewer dump station if presented to the Joint Authority.*" [2014 Staff Report, p. 4 (Emphasis added)]

This seems to place the burden on finding alternative access on Friends and users rather than on the applicant for the permit, which is contrary to the land use regulations and State law, such as the Coastal Act.

Regarding Friends' issue of relocating and reducing the size and functionality of the historical staging area for horses and recreational vehicles, the Staff Report concludes that neither State nor local law expressly authorized the use of the site for these purposes:

"Friends of Oceano Dunes also claim that development of the proposed project, which eliminates the use of the existing vacant lot by off-highway vehicles and equestrians, would create an adverse impact. *However, the use of the site has always been informal and is not explicitly provided for in the Coastal Act, the City's certified Local Coastal Program, the City's or State's General Plan, or any other State or City policy document.* It should also be noted that the proposed project has included an area for the parking of over-sized vehicles consisting of approximately 10,500 square feet in the southeast corner of the site." [2014 Staff Report, p. 5 (Emphasis added)]

Labeling the use "informal" has no legal meaning or consequence. The use was in existence and at least was an accepted, long-standing, grand-fathered use even if it is claimed that it was somehow nonconforming.

The proposed project for the Grover Beach Lodge & Conference Center (Project) plans to relocate the long-standing staging area for off-highway vehicles (OHV) that has currently and historically been located and operated near the entrance to Oceano Dunes SVRA. [Suty Decl., para 4]

However, years of public usage of the staging area for public recreational purposes and uses incidental thereto for recreational uses at the Oceano Dunes SVRA beach and dunes without asking or receiving permission from the landowner might provide an implied dedication of the staging area to the public,

and thus the staging area is authorized by State law. An implied dedication of land arises when the public uses the land, like the staging area, for a period of more than five years with the knowledge of the owner, without asking for permission and without objection. Implied dedication of land to the public is particularly true when the public uses the land for recreational or park uses or other public uses. An implied dedication of land for the benefit of the public cannot be extinguished or terminated by the City of Grover Beach issuing a CDP for this project that would attempt to remove the public dedication by relocating the staging area to a new site.

The facts support a claim of implied dedication of the staging area. For a period of more than five years, members of the public used this staging area land as they would have used other public land, believing the public had a right to such uses of this shoreline or coastal land. The use of the staging area over the years was by members of Friends as well as diverse groups of members of the general public visiting or using the SVRA beaches and dunes, such as families, young and old. The use was open, public and continuous such that the landowner had knowledge, and yet no actions were taken to object, interfere or prohibit such use, and thus the public did not ask or receive permission to use the staging area in the shoreline or coastal area. [Suty Decl., paras 3, 5, 6, and 7]

Members of Friends and the public generally have used the staging area on Grand Avenue near the entrance to the beach consistently since 1964 for a variety of recreational uses related to using the SVRA. [Suty Decl., para 5] Members of the public using the staging area over the years are diverse, including young and old people and families. [Suty Decl., para 6] One member of Friends has stated how he and his family used the staging area to "change our vehicle's street tires to sand tires before entering the SVRA." [Suty Decl., para 5] Other members of the public have used the staging area to perform other activities in preparation for entering the SVRA for swimming, riding horses, riding bikes, viewing the ocean, OHV riding, or fishing on the beach and when exiting the SVRA. [Suty Decl., para 6] The staging area has been used for preparation to use the SVRA park. For example, some people unload OHVs from recreational vehicles so that the staging area allowed or enabled the public access to the OHV riding areas of SVRA. [Suty Decl., para 6]

Prior to becoming state land, and when the area was in private ownership, members of the public used the staging area for more than 5 years without objection or interference by anyone, including the private property owner. Public use of the staging area has been continuous and uninterrupted since 1964 for public recreational purposes and uses of the SVRA. [Suty Decl., para 6]

People used the staging area believing that the public has a right to such use. People used the staging area whenever they wished to do so – it was continuous, regular, open and public use. Friends' member Joel Suty can testify that he never experienced any restrictions or warnings from the property owner,

and never asked permission or saw anyone asking permission to use the staging area. He can testify that he never saw any signs that use of the staging area was prohibited, never saw any "No Trespassing" signs, and never saw any structures, fencing or barricades preventing access to the staging area. Suty entered and used the staging area freely as he pleased and without any thought or worry just as you would use any recreational support facility that was open and available to the public. Suty never even saw any attempts to prevent public use of the staging area. [Suty Decl., para 7]

An implied dedication is consistent with the strong policy expressed in the California Constitution and statutes, cited in this letter and our prior comment letter, to encourage public use, and therefore public access, of shoreline or coastal recreational areas.

The California Constitution, statutory provisions and the City's LCP provisions govern maximum access to the coast and public recreational opportunities. [See, Article X, Section 4 of the California Constitution, Public Resources Code, § 30210 and Friends' January 9, 2014 comments.] The Legislature made it clear that "[n]othing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution" that provides the public with a "constitutional right of access." Public Resources Code, § 30214(b). Maximizing public access to the coast and maximizing public recreational opportunities in the coastal zone are one of the core principles of the Coastal Act. Public Resources Code § 30001.5(c); See also, §§ 30220-30224 re recreational use priority. The public's access and use rights are so important that the Legislature expressly established that in this Project "[d]evelopment will not impact the resources or the public's use of the state park." Public Resources Code § 5003.02.1(b)(3). The City's LCP recognizes the importance of this Constitutional mandate in *LCP 5.5 Conformance with Coastal Act Policies. 5.5.1.A. Maximum Access and Recreation Opportunities*. "Section 30210 of the Coastal Act is the most comprehensive of the Act's policies concerning shoreline access and recreation. For this reason, in order to determine the extent to which the City and the California Department of Parks and Recreation are or are not in compliance with this policy, several points will need to be addressed."

Yet, the 2014 Staff Report and the Draft Resolution to approve the CDP also present a narrow view of the Constitutional right of maximum access to the coast and public recreational opportunities, such as Oceano Dunes SVRA, and this narrow view is evident in its consistency findings, which affect the conclusions reached. The City interprets access as limited to the transportation access ways to the coast and dunes, such as bike trails, and roads. The Draft Resolution under consideration (<http://www.grover.org/DocumentCenter/View/4258>), for example, when listing consistency findings regarding the policies and requirements of Chapter 5 of the LCP, states that the project does not obstruct access to the dunes and beach, citing walkways, bicycle paths and road access at West Grand Avenue. [Draft Resolution, pp. 2 (Policy 5.7.A. 1. a), 5 (policy 5.7.F.1.a. (6))]

However, the Draft Resolution findings also note that public access means the direct paths to the beach (such as walkways) and indirect access structures, facilities, or amenities, such as recreational support facilities, or "other public access amenities" that, similar to transportation routes, enable access to the recreational park:

"Policy 5. 7.F.1.a.(13) Public Access Management Plan. The project shall include a public access management plan that clearly describes the manner in which general public access associated with the project is to be managed and provided, with the objective of maximizing public access to the public access areas of the site (including all walkways, benches, boardwalks, stairs and **all other public access amenities**)."[Draft Resolution, p. 6 (Emphasis added)]

"All other public access amenities," or useful features or facilities, include the public recreational access services and recreational support facilities, such as the staging area and the dump station, that are part of the structural facilities in the chain of access ways to the beach and dunes. The access to Oceano Dunes includes a chain of transportation facilities (freeways, roads, paths, trails, etc) and includes the recreational support facilities, such as the staging and dump station, as the facilities needed to provide maximum access to the beach/dunes and recreational opportunities. LCP 5.7 Recommendations. D. Recreational Support Facilities makes this clear by requiring that the City "[e]nsure that adequate parking and *other recreational support facilities are available to the public.*" [Emphasis added] If the recreational support facilities are not functional, then the flow of traffic from the roads to the support facilities to the beach becomes obstructed and impaired. The absence of adequate facilities will mean frustration, delay, congestion, and thus obstruct visitors from accessing the unique coast and public recreational activities. Chapter 5 Public Access and Recreation Component, 5.7 Recommendations, F. Private Visitor-Serving and Recreational Facilities, 1. Policies, 6, recently amended, recognized that road access to the project and to the beach area requires facilitation of "all forms of access" to the beach area:"

"(6) Ingress/Egress. Road Access to the project shall be from Highway 1, Le Sage Drive and Grand Avenue and shall be designed in such a way as to *facilitate all forms of access to the project and to the beach area* (including vehicular, pedestrian, bicycle, etc.)." (Emphasis added)

In fact, the Draft Resolution's findings of consistency with the "development standards for the C-P-C Zone as required by Section 9122.12 of the Zoning Code" recognizes that Section 9122.12(M) requires that "all development in this area be required to maintain or *enhance public access* to and along the shoreline based on the development's impact on public access." [Draft Resolution, p. 9 (Emphasis added)]

For these reasons, the CDP would fail to conform with the LCP and the public access mandates and policies under the Coastal Act and the California Constitution that are key to ensuring that the Oceano Dunes SVRA remains a functional and pleasurable

experience for the millions of visitors each year, an interest shared by the City and Friends. And, the approval and issuance of a CDP that includes relocation of the staging area might violate State law.

Thus, Friends requests that this CDP under reconsideration not be approved until these issues are addressed. In this regard, Friends is willing to discuss and work with the City to obtain resolutions of these issues, and prior to the initiation of any litigation.

Sincerely,

/s/

Tom Roth

DECLARATION OF JOEL SUTY

I, Joel Suty, declare that the following declaration is true and accurate. The following is based on my personal knowledge and if called upon, I can competently testify as to the truthfulness of this declaration.

1. I am a member of the Friends of Oceano Dunes (Friends).

2. Friends is a not-for-profit public benefit corporation and association representing users of Oceano Dunes SVRA, and is the only entity exclusively representing the interests of OHV users and visitors to the park. According to its Articles of Incorporation, Friends was formed for the express purpose of preserving and developing recreational uses in the Oceano Dunes SVRA area of San Luis Obispo County. Friends is dedicated to ensuring continued access to the beach and dune areas at Oceano Dunes SVRA for the park's statutorily dedicated use for OHV as authorized under Public Resources Code, § 5090 et seq.

3. Friends' members --- including myself, my wife, and my children --- are frequent users of Oceano Dunes SVRA, visiting several times a year to enjoy the recreational elements unique to the beach and dune setting at the park. For decades, my family and I have enjoyed Oceano Dunes SVRA each year and intend to continue to frequent the park

in the future. I and other Friends' members regularly engage in recreational activities at Oceano Dunes SVRA.

4. The proposed project for the Grover Beach Lodge & Conference Center (Project) plans to relocate the long-standing staging area for off-highway vehicles (OHV) that has currently and historically been located and operated near the entrance to Oceano Dunes SVRA.

5. My family and I have used the staging area on Grand Avenue near the entrance to the beach consistently since 1964. My family and I use the location to change our vehicle's street tires to sand tires before entering the SVRA.

6. I have witnessed many other members of the public performing other activities at the staging area in preparation for entering the SVRA for swimming, riding horses, riding bikes, viewing the ocean, OHV riding, or fishing on the beach and when exiting the SVRA. Various people, young and old, families, used the staging area. For example, we witnessed people unloading OHVs from recreational vehicles so that the staging area allowed or enabled the public access to the OHV riding areas of SVRA. Prior to becoming state land, and when the area was in private ownership, we used and observed others using the staging area for more than 5 years without objection or interference by anyone, including the private property owner. Our use of the staging area has been continuous and uninterrupted since 1964 for public recreational purposes and uses of the SVRA.

7. My family and I used the staging area believing that the public has a right to such use. My family and I used the staging area whenever we wished to do so – it was continuous, regular, open and public use. I never experienced any restrictions or warnings from the property

owner, and never asked permission or saw anyone asking permission to use the staging area. I never saw any signs that use of the staging area was prohibited, never saw any "No Trespassing" signs, and never saw any structures, fencing or barricades preventing access to the staging area. I entered and used the staging area freely as we pleased and without any thought or worry just as you would use any recreational support facility that was open and available to the public. I never even saw any attempts to prevent public use of the staging area.

I declare under penalty of perjury that the forgoing is true and correct.

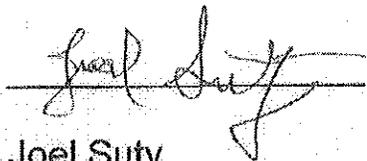
Executed this 3rd day of March, 2014 at San Jose, California.

Joel Suty

permission to use the staging area. I never saw any signs that use of the staging area was prohibited, never saw any "No Trespassing" signs, and never saw any structures, fencing or barricades preventing access to the staging area. I entered and used the staging area freely as we pleased and without any thought or worry just as you would use any recreational support facility that was open and available to the public. I never even saw any attempts to prevent public use of the staging area.

I declare under penalty of perjury that the forgoing is true and correct.

Executed this 3rd day of March, 2014 at San Jose, California.

A handwritten signature in cursive script, appearing to read "Joel Suty", written over a horizontal line.

Joel Suty