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Prepared January 26, 2018 for February 7, 2018 Hearing

To: Commissioners and Interested Persons

From: Dan Carl, Central Coast District Director
Susan Craig, Central Coast District Manager
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Subject: CDP Number 3-12-050 (ODSVRA Dust Control) Condition Compliance

On September 14, 2017, the Coastal Commission approved a coastal development permit (CDP) with conditions for California Department of Parks and Recreation's (DPR) proposed five-year program to implement a series of measures aimed at controlling and minimizing particulate matter (or "dust") emissions associated with the Oceano Dunes State Vehicular Recreation Area (ODSVRA; see **Exhibits 1 and 2** for project location maps and photos) for compliance with San Luis Obispo County Air Pollution Control District (APCD) and California Air Resources Board (CARB) requirements.¹ These approved measures included planting approximately 20 acres of native dune vegetation per year (or a total of approximately 100 acres in five years); deploying approximately 40 acres of seasonal dust control measures (e.g., wind fencing) annually during the windy season (i.e., roughly from March to September each year); and installing and operating monitoring equipment to evaluate dust abatement effectiveness, all generally within the ODSVRA Off-Highway Vehicle (OHV) riding area. Such measures are intended to be developed in conjunction with the APCD and CARB, including to meet APCD Rule 1001 compliance and objectives.

In short, the Commission approved a CDP that authorizes a suite of potential dust control measures at ODSVRA, including allowing them to be applied in an amount and location that allows flexibility for addressing APCD and CARB air quality requirements based on the ongoing collaboration between DPR, APCD, and CARB. As part of this approval (CDP 3-12-050), the Commission required (via Special Condition 2) DPR submittal of an Annual Work Plan designed to identify the specific measures to be applied for any particular year, where such Plan was required to 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. Once reviewed and approved by the Coastal Commission's Executive Director, the Commission required that the Plan be reviewed by the Commission itself at a noticed public hearing, where the Commission can concur with the Executive Director's determination or it can modify the

¹ Including Rule 1001, which was adopted by APCD in 2011 and requires DPR to minimize particulate matter emissions for ODSVRA.

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Plan as it deems necessary to ensure effective implementation of dust control and monitoring measures consistent with the CDP (including assurance of compliance with APCD and CARB requirements). See **Exhibit 3** for the adopted summary of the Commission's September 2017 CDP action, and see **Exhibit 4** for the CDP's special condition language (including Special Condition 2 on page 3 of Exhibit 4).²

At the September 2017 hearing, the Commission identified the February 2018 hearing in San Luis Obispo County as a preferred time and venue for the Commission to review the Annual Work Plan for 2018 dust abatement in conformance with the CDP, including as a means of facilitating local public input and participation, which may further inform the final Annual Work Plan, as near as possible to affected communities near ODSVRA. Commission staff coordinated with DPR, APCD, and CARB after the Commission's September decision, including with respect to the importance of working collaboratively to identify a mutually agreeable and effective suite of dust control measures for the 2018 Annual Work Plan, and to submit the Plan to the Commission as soon as possible to allow time for preparation and staff report production for the February meeting. The proposed Annual Work Plan was ultimately submitted on January 22nd, and DPR submitted the signed CDP accepting its terms and conditions on January 25th.³

The proposed Annual Work Plan identifies the following five measures: 1) installation of 18 to 20 acres of dune vegetation; 2) application of "Operational Mitigation" measures in targeted areas in ODSVRA; 3) installation of approximately 40 acres of wind fencing; 4) installation of an experimental two- to three-acre vehicle riding enclosure; and 5) installation of air quality monitoring equipment in relation to the dust control measures identified. All of these measures would be located within specific OHV riding areas that have been shown to be highly emissive by CARB and APCD air quality modeling, and, other than the dune planting, would be removed after the 2018 windy season (i.e., roughly around October 2018). See **Exhibit 5** for DPR's proposed Annual Work Plan, and see **Exhibit 6** for APCD and CARB concurrence with the proposed Plan.

Of the proposed dust abatement measures, the first two (namely dune vegetation planting and operational mitigations) are measures that are already allowed via the ODSVRA base CDP (CDP 4-82-300).⁴ In fact, DPR indicates that the first measure (dune planting) has already been

² Staff notes that the Commission has been sued in San Luis Obispo County Superior Court by the Friends of Oceano Dunes over the Commission's approval of CDP 3-12-050 (Case Number 17CV-0576), and that that litigation is still pending. In addition, staff notes that the Friends of Oceano Dunes have also sued the Commission over the Commission's recent efforts to help facilitate dust control activities at ODSVRA on three other recent occasions. Specifically, Friends of Oceano Dunes sued the Commission in San Luis Obispo County Superior Court in 2016 challenging the Commission's issuance of an emergency CDP for dust control measures (Case Number 16CV-0160), and again in 2017 challenging the Executive Director's determination that certain dust control activities could proceed without a CDP (Case Number 17CV-0267), and those lawsuits too are also still pending in San Luis Obispo County Superior Court. And finally, Friends of Ocean Dunes also recently sued the Commission in federal court (the U.S. District Court for the Central District of California) alleging that the Commission's approval of CDP 3-12-050 for dust control measures violates the Federal Endangered Species Act (Case Number 2:17-cv-8733), and this case is still pending as well.

³ CDPs are not valid unless and until permittees sign the CDP acknowledging its terms and conditions and agreeing to abide by them, and returns a signed copy of the CDP acknowledgement to the Commission. Until that occurs, the CDP is not valid and in that scenario it is unknown if the permittee intends to proceed consistent with the CDP. In this case, DPR returned the signed CDP acknowledgement on January 25, 2018 (see **Exhibit 4**).

⁴ DPR was informed that the dune revegetation was allowed pursuant to the base CDP via Executive Director determination on December 7, 2017. At that time, DPR wanted to plant before winter rains to help facilitate successful revegetation.

completed (see page 15 of **Exhibit 5** for the location of the dune planting). And the second series of measures are focused on applying certain wind fencing within DPR's standard operating procedures to try to opportunistically reduce dust overall (e.g., replacing existing standard fencing with fencing designed to minimize sand/dust transport; using such sand/dust fencing as part of fencing associated with camping areas; etc.).⁵ Thus, although these two measures are listed in the proposed Annual Work Plan to help describe the full scope of work DPR plans to employ for dust abatement this year, they do not require separate authorization by the Commission through CDP 3-12-050 and the Annual Work Plan.

The remaining three proposed measures, however, are measures proposed to be authorized via CDP 3-12-050 and this Annual Work Plan. The third measure, the proposed wind fencing, would be placed in two areas, one 10 acres and another 30 acres (see page 15 of **Exhibit 5** for the proposed fencing locations). Such fencing would be 48 inches tall and installed in rows spaced 28 feet apart with the entire 10-acre and 30-acre areas fenced off from any access. With respect to the fourth measure, namely the two- to three-acre vehicle enclosure, DPR identifies this as a type of test strategy to determine the dust abatement effectiveness of simply closing off a known emissive area to OHV use. DPR has not identified the precise location of the closure at this time, but indicates it will conduct a detailed site inspection to determine the appropriate location upon Plan approval, and that the location selected will be based on its suitability to reduce dust emissions. And finally, DPR proposes a series of air quality monitoring stations to test the efficacy of these dust control measures, with the specific locations shown on page 14 of **Exhibit 5**.

All of DPR's proposed 2018 Annual Work Plan measures before the Commission for action (i.e., wind fencing, vehicle enclosure, and monitoring) were identified as potential dust abatement tools authorized under CDP 3-12-050, as was the dune planting already authorized. And the additional operational mitigations identified in the proposed 2018 Annual Work Plan should complement these measures. These measures are expected to help alleviate dust issues associated with ODSVRA operations, and are intended to have measurable positive effects on dust problems in the area. The proposed 2018 Annual Work Plan is consistent with the Commission's CDP action, including in terms of its expected effect on dunes, recreational access, and other coastal resources. As such, and because APCD and CARB have provided evidence that they have reviewed all of the measures and consider them consistent with their requirements related to dust control at ODSVRA (see **Exhibit 6**), the Executive Director approved the proposed 2018 Annual Work Plan on January 26, 2017. Pursuant to Special Condition 2 of CDP 3-12-050, staff now recommends that the Commission concur with the Executive Director's determination. The motion and resolution required to concur with this determination are found directly below on page 4.

⁵ DPR acknowledges that these are experimental strategies and that their potential effectiveness is unknown, but proposes to test their efficacy in reducing dust, including because of their relative ease of installation.

Motion and Resolution

Staff recommends that the Commission, after public hearing, **concur** with the Executive Director’s determination that the proposed 2018 Annual Work Plan meets the requirements of CDP 3-12-050, and recommends a **yes** vote on the following motion. The motion passes only by an affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission concur with the Executive Director’s determination to approve State Parks’ 2018 Annual Work Plan to implement the dust control and monitoring measures authorized by Coastal Development Permit 3-12-050, and I recommend a yes vote.*

***Resolution:** The Commission hereby concurs with approval of the 2018 Annual Work Plan and adopts the findings set forth above.*

Exhibits

- Exhibit 1: Project Location Maps
- Exhibit 2: ODSVRA Aerial Photos
- Exhibit 3: CDP 3-12-050 Adopted Summary of Commission Action
- Exhibit 4: CDP 3-12-050 Conditions
- Exhibit 5: DPR’s Proposed 2018 Annual Work Plan
- Exhibit 6: APCD and CARB Concurrence with DPR’s Proposed 2018 Annual Work Plan

Correspondence

- Correspondence 1: Public Comments Received