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# W20a

**Prepared May 18, 2018 for June 6, 2018 Hearing**

**To:** Commissioners and Interested Persons

**From:** Dan Carl, Central Coast District Director  
Susan Craig, Central Coast District Manager  
Kevin Kahn, Central Coast District Supervisor

**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, CDP 3-12-050, for California Department of Parks and Recreation's (DPR's) 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.<sup>1</sup> 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 subject to compliance with APCD and CARB requirements, 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 the approval of CDP 3-12-050, the Commission required (via Special Condition 2) that DPR submit 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

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<sup>1</sup> Including APCD's Rule 1001, which was adopted by APCD in 2011 and requires DPR to minimize particulate matter emissions at 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 assuring 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).<sup>2</sup>

At the Commission's February 2018 meeting in Cambria, the Commission approved DPR's 2018 Annual Work Plan. The approved 2018 Plan identified the following five measures: 1) fencing off and planting 18 to 20 acres of dune vegetation; 2) application of operational wind fencing mitigation measures in targeted areas in ODSVRA;<sup>3</sup> 3) installation of approximately 40 acres of seasonal 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.<sup>4</sup> 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 currently approved Annual Work Plan for 2018.

Subsequently, on April 30, 2018, DPR and APCD agreed to a Stipulated Abatement Order that identifies dust control mitigations that DPR needs to employ starting in 2018 to address dust emissions in accordance with Rule 1001 as determined by APCD (see **Exhibit 6**), and DPR now proposes an amendment to the currently approved 2018 Annual Work Plan to address Order requirements and to reconcile the work required by the Order with the work as authorized under the 2018 Annual Work Plan approved by the Commission at the February 2018 meeting (see **Exhibit 7** for DPR's proposed changes). Specifically, DPR now proposes to fence off some 74 additional acres in a series of 'islands', and to install wind fencing in arrays (approximately 34 acres) and native vegetation (up to 40 acres) within those areas in the short term (see the "Proposed 1930s fence arrays" in **Exhibit 7**). The identified island areas are intended to approximate foredune vegetated areas that existing in the early 1900s (and are connected to existing vegetated areas), and have been chosen based on APCD/CARB modelling for their ability to have the largest potential reduction on dust emissions. In addition to the new islands,

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<sup>2</sup> 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 actions approving dust control activities at ODSVRA on three other recent occasions since 2016. 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 Oceano 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.

<sup>3</sup> Operational mitigation refers to installing wind fencing within DPR's standard operating procedures to try to efficiently reduce dust overall in the context of DPR's standard operation of Oceano Dunes (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.).

<sup>4</sup> Note that the first two measures (namely dune vegetation planting and operational mitigations) are measures that are already allowed via the ODSVRA base CDP (CDP 4-82-300). Thus, although these two measures are listed in the Annual Work Plan to help describe the full scope of work that DPR plans to employ for dust abatement this year, they did not actually require separate authorization by the Commission through CDP 3-12-050 and its Annual Work Plan process. In other words, these two measures are independently authorized under CDP 4-82-300.

DPR also proposes to plant native dune vegetation on the same schedule within one of the areas previously called out for wind arrays in the current approved Annual Work Plan (i.e., in the area to the west identified as “2018 Wind fencing projects” in **Exhibit 7**; approximately 30 acres). In all cases, both for the 74-acre areas and the 30-acre area, DPR would ultimately remove wind fencing arrays within these areas and completely vegetate these areas as appropriate native stock becomes available using established restoration methods and seed collected onsite and propagated in the ODSVRA nursery.<sup>5</sup> Once vegetated, these areas will remain as areas that are off-limits to OHV riding and that are maintained as vegetated islands. Again, see DPR’s proposed amendment to the Annual Work Plan, including the figures showing the various areas described in **Exhibit 7**.

Dune vegetation and wind fencing were identified as key potential dust abatement tools authorized under CDP 3-12-050, particularly dune vegetation because of its ability to sequester dust<sup>6</sup> in a manner that also enhances habitat values. The additional wind fencing and eventual complete replacement with vegetated islands within the foredune area should significantly alleviate dust issues associated with ODSVRA operations, and is intended to have measurable positive effects on dust problems in the area. Wind fencing arrays have been found to reduce dust generation by up to 75% in some cases, and permanent vegetation can be even more effective, reducing dust emissions to near zero. As stated in the Order (see page 8 of **Exhibit 6**):

*The Parties agree that sand fencing closed to riding with an array of fencing within the perimeter has been used at ODSVRA with a demonstrated effectiveness in reducing dust generation of approximately seventy-five (75) percent. The Parties agree that there is scientific consensus that vegetation is the most effective in reducing dust generation with an effectiveness of nearly one hundred (100) percent within the vegetated areas.*

Importantly, as also stated in the Order, “re-establishing a vegetated foredune area is a preferred sustainable mitigation tool,” and the Special Master (Dr. W.G. Nickling) stated (also in the Order; see page 9 of **Exhibit 6**) that:

*More ‘natural’ types of solutions are preferable to engineered solutions (e.g., fences and straw bales) given the areal extent of the problem. Engineered solutions are often unattractive and not in keeping with the Parks vision for maintaining the quality of the park experience. Natural solutions might include severely restricting rider activity, reducing the areal extent of rider activity, especially near the top of the tidal zone to allow the re-establishment of the foredunes that were formerly present at the site.*

However, it should also be noted that the vast dune sheets at Oceano Dunes were sparsely vegetated historically. Therefore reinstalling vegetation in locations where it was found in the

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<sup>5</sup> To summarize, DPR currently proposes to immediately revegetate up to 40 acres within the 74-acre fenced islands with native dune revegetation. Wind fencing arrays would be installed within the remaining approximately 34 acres of the fenced islands, but would be progressively replaced with native dune revegetation. In addition, 30 acres previously identified for wind fencing array treatment would also be substituted with native dune revegetation on the same schedule. In total, DPR proposes approximately 104 acres of native dune revegetation using established restoration methods.

<sup>6</sup> Both APCD and DPR agree that dune vegetation is the most effective tool to reduce dust generation, with an effectiveness of nearly 100% within the vegetated area.

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past makes ecological sense. More generally, the need for dust abatement must be balanced with the historical nature of this area, both recreationally and habitat-wise, and the proposed efforts strike an appropriate balance in that respect. In any case, the dune revegetation would be at low-density and of low-stature in areas adjacent to critical habitat for the Western snowy plover so as not to provide undo cover for potential plover predators.

In short, the proposed amended Annual Work Plan activities would serve to move dust abatement activities in the direction identified as the most effective by APCD, namely eventual revegetation of foredune areas, and are expected to have a meaningful impact on dust abatement consistent with the requirements imposed by APCD/CARB, and consistent with the Commission's CDP. In addition, the reconfigured Annual Work Plan and the areas that would be fenced and eventually revegetated do not implicate any coastal resource impacts beyond the revegetation already approved under the CDP. Namely, in that action, the Commission approved approximately 20 acres per year to be revegetated in this manner over five years under CDP 3-12-050. Here, DPR proposes approximately 104 acres of such revegetation in the foredunes, which is roughly the same approximated areal coverage, albeit on a different temporal scale (DPR does indicate that it will revegetate as much as possible quickly, up to 40 acres, but that it will take time to develop the necessary native seed stock to revegetate the overall areas). The phased timing of revegetation under the CDP was not a critical component of the CDP, and thus there are no significant additional coastal resource concerns with allowing 104 acres of vegetation starting now, versus approximately 20 acres per year over five years. Further, the CDP terms and conditions (and the Coastal Act) are clear that any approved measures need to be consistent with APCD/CARB requirements, and the stipulated Order is at its core just that. In other words, the approximate aerial coverages and related numerical identifiers in the CDP were approximations, subject to APCD and CARB requirements, and thus presumed that DPR might arrive at different areas and thresholds based on DPR's ongoing collaboration with APCD and CARB. The current proposed amendment to the Annual Work Plan is within the framework as contemplated through the CDP's terms and conditions, including its Annual Work Plan process. Further, the revegetation areas are all located outside of the critical habitat area for the western snowy plover, and the low-statured, low-density vegetation proposed shouldn't result in any kind of significant impacts on such species (such as the potential for increased predation), including because the critical habitat area is already subject to ongoing vehicular use and additional dune habitat revegetation needs to be understood in that context.

In short, the amended 2018 Annual Work Plan is consistent with the Commission's CDP action as well as the previously approved 2018 Annual Work Plan, including in terms of its expected effect on dunes, recreational access, and other coastal resources; is based on APCD and CARB requirements related to dust abatement at ODSVRA; and should result in measurable positive impacts on dust problems in the area. As such, the Executive Director approved the proposed amended 2018 Annual Work Plan on May 18, 2018. 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.

**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, as amended, 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 DPR's 2018 Annual Work Plan as amended 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 as amended 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 Approved 2018 Annual Work Plan

Exhibit 6: APCD/DPR Stipulated Abatement Order

Exhibit 7: DPR's Proposed Amendment to the Approved 2018 Annual Work Plan