

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV



F12a

Prepared December 16, 2021 for December 17, 2021 Hearing

To: Commissioners and Interested Persons

From: Dan Carl, Central Coast District Director
Kevin Kahn, Central Coast District Manager

**Subject: Additional hearing materials for F12a: CDP Amendment 3-12-050-A3
(State Parks' Proposed Oceano Dunes Dust Control Amendment)**

This package includes additional materials related to the above-referenced hearing item as follows:

Staff report addendum

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F12a

Prepared December 16, 2021 for December 17, 2021 Hearing

To: Commissioners and Interested Persons

From: Dan Carl, Central Coast District Director
Kevin Kahn, Central Coast District Manager

**Subject: STAFF REPORT ADDENDUM for F12a: CDP Amendment 3-12-050-A3
(State Parks' Proposed Oceano Dunes Dust Control Amendment)**

The purpose of this addendum is to respond to certain public comments received regarding the above-referenced item (see correspondence package for this item for comments received), as well as to provide one small clarification to Special Condition 1(b) regarding seasonal sand fencing. The following is thus added as a response to comments section to the staff report (as subsection 6 on staff report page 32, thus renumbering the CEQA section as subsection 7).

Response to Comments

In the time since the staff report was distributed on December 3, 2021, the Commission received a letter from the Friends of Oceano Dunes (Friends) articulating disagreement with many of the findings and conclusions in this report.¹ Friends does not support any reduction of acreage currently available for vehicular, off-highway vehicle (OHV) and camping use, including for dust control purposes.

To summarize, Friends argues that: 1) the proposed dust measures are not necessary or effective to reduce dust emissions because OHV use is not a contributor to any adverse air quality; 2) the proposed projects are inconsistent with Coastal Act public access and recreation provisions due to the resultant loss of acreage dedicated to OHV and camping use; 3) the proposed dust control mitigations will result in take of Western

¹ On December 15, 2021, the Commission also received a joint letter from the Motor Industry Council (MIC), the Specialty Vehicle Institute of America (SVIA), and the Recreational Off-Highway Vehicle Association (ROHVA) (MIC/SVIA/ROHVA) and on December 16, 2021 the Commission received a letter from the American Sand Association (ASA), both of which reiterate a subset of Friends arguments, with MIC/SVIA/ROHVA also asking that the Commission postpone taking action on this matter so that the Off-Highway Motor Vehicle Recreation (OHMVR) Commission can better weigh in on certain aspects of this CDP amendment application. It is noted here that on the matter of the CDP amendment application itself, although the MIC/SVIA/ROHVA letter alleges that "Commission staff is proposing an amendment" for the project evaluated herein, and ASA asserts that this is a "proposed staff amendment", this CDP application is proposed by State Parks, and emanates from State Parks' discussions and collaborations with APCD and the SAG. Commission staff has evaluated that proposed project, but it is a State Parks' proposed amendment, and it is not proposed by Commission staff.

3-12-050-A3 (Oceano Dunes Dust Control Amendment) Addendum

snowy plover and California least tern, both protected under the State and Federal Endangered Species Acts (ESAs), due to increased predation as a result of dune revegetation efforts; 4) the LCP's map identifying Oceano Dunes as almost entirely ESHA is not legally part of the LCP, and even if it were, it does not legally identify the dunes as ESHA; 5) the dust control CDP, including this amendment, impermissibly amends CDP 4-82-300 without proper notice and public participation; 6) approval of the projects would be inconsistent with CEQA because it is reasonably foreseeable that State Parks will need to employ additional dust control mitigations usurping additional OHV/camping acreage, and thus there is a lack of cumulative impacts analysis of the dust control program as a whole; and 7) the Commission does not have the authority to require applicants to cover any fees associated with litigation defense. While each of these issues are thoroughly addressed in the above sections of this report, the following provides a brief response here as well.

Dust Mitigation Effectiveness

First, with respect to the need for the dust control program, as described in detail beginning on page 11 of this report, there is a long history of the San Luis Obispo County Air Pollution Control District (APCD), its air quality researchers, and academic partners finding that OHV use is a contributor to adverse downwind air quality. Their findings have been confirmed by the Commission's Staff Ecologist, Dr. Laurie Koteen, who has many years of experience studying the physics of atmospheric transport of trace gases, which is governed by the identical physical processes as dust transport. And, importantly, the mitigations employed by State Parks to date through dune revegetation efforts have been working to reduce dust emissions. Vegetation physically obstructs dust transport by blocking sand particles before they become swept into traveling air masses, and reduces wind speeds at the sand surface, thereby greatly reducing surface emissivity. Notably, the Desert Research Institute (DRI), who serve as the consultants on air quality to State Parks, found a 27% to 31% decrease in PM10 levels at the CDF air quality monitor in 2020 as compared with 2014 and 2017, two years with similar wind profiles as 2020 but prior to the dust control efforts as authorized by the CDP.^{2,3} The reasons for such decreases during 2020 are attributable to the cessation of OHV use between April through October 2020 during the Covid-19 pandemic, and the restoration of dunes via vegetation (see Figure 1 below). In a subsequent analysis, DRI took a large number of manual measurements using a device known as a PI-SWERL in both 2019 and 2020. From these measurements, they concluded:

*Based on the record of PI-SWERL measurements from 2013 to 2020, and the in-Park monitoring of meteorologic and 212-PM10 in 2019 and 2020, **it appears that the cessation of OHV activity in 2020 had a demonstrable effect on the emissivity of the dune surfaces in the riding area...** Although variable through time, due likely to moisture effects on emissivity, **the emissivity of the***

² Communication with APCD Senior Air Quality Scientist Karl Tupper.

³ Gillies, J., E. Furtak-Cole, Mejia, J., Etyemezian, "Increments of Progress", Desert Research Institute, January 5, 2021.

3-12-050-A3 (Oceano Dunes Dust Control Amendment) Addendum

Lagrande Tract by September 2020 was ≈50% less emissive than it was in 2019, according to the PI-SWERL measurements.⁴ (emphasis added)

Upon review of this report, the Scientific Advisory Group, a group of air quality experts that oversees State Parks' dust control efforts, commented:

*Regarding the DRI report, the SAG wishes to highlight the fact that **this report provides compelling evidence for the substantial and unambiguous impact of OHV activity on increasing PM10 mass emissions at the ODSVRA, as well as airborne PM10 concentrations downwind of the ODSVRA, relative to undisturbed natural conditions.** Key findings of the DRI report include the following: (1) Riding Areas subject to intensive OHV activity produce substantially more PM10 mass emissions (per acre) than relatively undisturbed Non-Riding Areas; (2) During the 2020 COVID-19 closure, sampled locations within the Riding Area experienced a significant decline in PM10 emissivity relative to previous years; and (3) During the 2020 COVID-19 closure, airborne PM10 concentrations relative to wind strength (as defined by "wind power density" (WPD)) declined significantly over the course of the windy season, in contrast to the usual trend of increasing PM10 concentrations through time relative to WPD during a typical windy season.⁵ (emphasis added)*

In sum, the proposed dust mitigations—retiring certain areas from vehicular, OHV and camping use and permanently restoring them to vegetated dunes—is both needed and working to reduce downwind dust emissions, which is why these measures have been formulated by the APCD and its air quality scientists, agreed to and proposed by State Parks, and recommended for Commission approval.⁶

However, it should also be noted that regardless of whether the dust control projects are effective at reducing dust emissions and improving air quality (which they are, as

⁴ J.A. Gillies, E. Furtak-Cole, G. Nikolich, and V. Etyemezian, "Examining Dust Emissions and OHV Activity at the ODSVRA, Desert Research Institute, August 2, 2021.

⁵ Scientific Advisory Group (SAG) Memo to: Gary Willey, San Luis Obispo Air Pollution Control District (SLOAPCD); Jon O'Brien, California Department of Parks and Recreation (CDPR), August 16, 2021, https://storage.googleapis.com/slocleanair-org/images/cms/upload/files/SAG_20210816_comments%20on%20DRAFT%202021%20ODSVRA%20ARWP%20-%20final.pdf

⁶ On this point it is noted that both the MIC/SVIA/ROHVA and ASA letters allege that the dust problems are not caused by OHV activity, and point to a recent report commissioned by State Parks by researchers at UCSD's Scripps Institute as evidence. It is this evidence that MIC/SVIA/ROHVA suggests requires that the Commission postpone this matter so that the OHMVR Commission can debate such evidence in a properly noticed setting, and then provide comments for Commission consideration of this amendment. However, the Scripps report and its findings are discussed above (starting on page 26 of this report), and it is clear that APCD and SAG continue to disagree with Scripps researchers' conclusions, including the methodologies employed and the report's findings. Ultimately, under the Coastal Act, it is the purview of APCD to analyze air pollution and its sources, and APCD has determined – notwithstanding the findings attributed to Scripps researchers – that the dust problems downwind of the Park are attributable to the dune degradation associated with vehicular/OHV use. And APCD has collaborated with State Parks on State Parks' proposal to address such problems through this CDP application at this time. As such, a postponement of the type requested by MIC/SVIA/ROHVA is not warranted here.

3-12-050-A3 (Oceano Dunes Dust Control Amendment) Addendum

described above), it is not the role of the Commission to establish air quality standards or air pollution control programs. The legislature has delegated those responsibilities to the California Air Resources Board and local air pollution control districts (per Coastal Act Section 30414). The Commission must evaluate the dust control project proposed by State Parks for consistency with the Coastal Act, which it has done in these findings, not to evaluate its efficacy as an air pollution control program.

Public Access and Recreation Impacts

Next, with respect to the impact such permanent dust control mitigations (which lead to vehicular, OHV and camping reductions) have on public access and recreation, this issue, too, is discussed in detail in this report beginning on page 18. It is important and Coastal Act-consistent to reduce recreational pursuits when such pursuits are resulting in problems—in this case air quality problems identified by APCD—and when the solution to address those problems is by targeting their source. As thoroughly discussed earlier in this report, the Coastal Act does not stand for a premise of recreation without regard to constraints. To the contrary, the Act clearly states that access and recreation shall be provided consistent with the need to protect “natural resource areas from overuse.” Overuse of the dunes at Oceano Dunes, and particularly that attributed by APCD to OHV uses, has resulted in their heightened emissivity, and eliminating such uses is appropriate to help solve the area’s air quality issues. And as stated in the staff report, it’s also important to reiterate that the dunes in question here are all ESHA, and eliminating non-resource-dependent uses (something not allowable within dune ESHA) and replacing with native dune vegetation/restoration (something encouraged and envisioned in dune ESHA) is inherently Coastal Act consistent. The Commission has found that OHV and vehicular recreation is degrading the dune resources on which it occurs, such as the nearly 109 acres in question here (see, for example, the Commission’s March 18, 2021 action on CDP 4-82-300), and that these resources cannot handle that level of use and use intensity and still retain their inherent habitat values.

In fact, OHV use and activity has been identified as one of the most destructive and disruptive activities that can take place in such dune and beach areas.⁷ Based on these facts, it is appropriate to discontinue this recreational use in such areas, including to maintain conformance with Coastal Act public recreational access (and ESHA) provisions (as the Commission did in relation to such vehicular and OHV uses in beach and dune ESHA at the Park under CDP 4-82-300 on March 18, 2021, and all of the recreational areas proposed here for restoration were areas required to be closed to such recreation by the Commission in its March action). And while Friends argues that the Coastal Act protections afforded public recreational access require the continuation of that activity (and MIC/SVIA/ROHVA concur on this point in their joint letter),⁸ even if it

⁷ See, for example, Schlacher, T.A., L. Thompson, and S. Price: Vehicles versus Conservation of Invertebrates on Sandy Beaches: Mortalities Inflicted by Off-Road Vehicles on Ghost Crabs, in *Marine Ecology* (V.28; 354-367; 2007); and Defeo, O., A. McLachlan, D.S. Schoeman, T.A. Schlacher, J. Dugan, A. Jones, M. Lastra, and F. Scapini: Threats to Sandy Beach Ecosystems: A Review, in *Estuarine, Coastal, and Shelf Science* (V.81; 1-12; 2009), as well as past Commission Staff Ecologist memorandums on this subject, including for the March 18, 2021 CDP 4-82-300 review (see Exhibit 3).

⁸ MIC/SVIA/ROHVA also claims that \$22 million has been spent from the OHV Trust Fund to cover expenses associated with “shutting down access to OHV activity” due to Commission actions, and the

3-12-050-A3 (Oceano Dunes Dust Control Amendment) Addendum

disrupts dune habitats, that is incorrect, as the Coastal Act requires that recreational access be compatible with the protection of natural resources.

Habitat Impacts

Friends asserts that dune restoration will result in adverse impacts to listed species by increasing predation on such species. As discussed starting on page 16 of this report, including based on input from Dr. Koteen), planting native dune vegetation will be beneficial for these species relative to vehicular use. Commission staff also has discussed these issues with USFWS scientists who are charged with implementing the ESA, who similarly have not raised any concerns regarding dune vegetation and predation issues (including in the over four years since the Commission's initial dust control program CDP approval). In fact, Dr. Koteen reviewed six years' worth of State Parks' data regarding predation issues, including the number of days in which predators were detected during the plover/tern nesting season. Her analysis shows there to be no statistically significant differences in plover and tern predation between the years 2015 to 2021, reconfirming her assessment that speculation that there would be increased predation due to dune vegetation is baseless (see Figure 2 below).

Notably, although the difference among years in mammal detection is not statistically significant, there is an observable decline in daily predatory mammal detections in the latter half of the time period, 2019-2021 after the beginning of dust control work, compared to 2015-2018 before it (see Figure 2b below). Predatory birds seek out prey from the air or while perched on elevated structures, while mammals are ground-based and therefore more likely to use vegetation as cover. In other words, of the two classes of predatory species considered (mammals and birds), a change in mammal detection rates is more relevant to understanding how/whether vegetation has affected predation rates. Thus, the fact that there is not a measured increase in mammalian predators is strong evidence that dune vegetation has not increased predation. Further, the

ASA similarly describes it as "wasteful spending ... on abatement". This raises a series of responses. First, the Commission has to date authorized State Parks' proposals for permanent dust control mitigations that have reduced OHV activity, but those were State Parks' proposals emanating from their work with APCD and the SAG, and not actions that the Commission somehow took independently or somehow at odds with State Parks. To imply otherwise, as MIC/SVIA/ROHVA do, reflects a misunderstanding of the context for the Commission's dust control decisions. Further, although the Commission acted in March of this year to require that OHV activity be eliminated at the Park by 2024, that is a future requirement and has not yet been implemented. And the Commission's March requirement to maintain the seasonal enclosure permanently (i.e., prohibiting OHV and vehicular activities in this area for an additional 5 months of the year), and to extend certain seasonal habitat protection fencing during 7 months of the year, actually represent fairly limited fencing additions, and certainly not in the neighborhood of costing \$22 million. And finally, as the Commission found in its March 2021 action, there is a fundamental misunderstanding about how the OHV Trust Fund is generated. Specifically, analysis of the state's fuel tax, which is applied to the purchase of all fuel in California, suggests that most of the monies directed into the OHV Trust Fund actually comes from non-OHV users. In fact, it appears that about 70% of the fuel tax that is directed into the Fund comes from non-OHV users, due to methodological and calculation issues with the fuel tax formula. Thus, applying that calculation, about half of the OHV Fund's FY 2020-21 revenues (about \$37 million of the \$75 million in revenues identified for FY 2020-21) comes from non-OHV users. Thus, the suggestion that somehow these funds come exclusively from OHV users and are somehow required to only be used for that purpose, as is being suggested here by MIC/SVIA/ROHVA and ASA, is mis-founded. In addition, the Park was actually purchased almost entirely with State General Funds, and not OHV Trust Fund monies, in any case.

3-12-050-A3 (Oceano Dunes Dust Control Amendment) Addendum

assertion that an increase in vegetation will directly lead to greater predation assumes that the activity of nesting shorebirds is static, and does not respond to a change in environmental conditions. When faced with an increase of vegetation in one location, nesting shorebirds will instinctually relocate to other areas where vegetation is less dense. In sum, the available data confirms Dr. Koteen's previous assessments in that dune revegetation will not result in adverse impacts, including via predation, to sensitive bird species.

It's also important to review the proposed project in context. Under the "no project" alternative of no restoration taking place in critical habitat areas, which is effectively what Friends seeks, plovers and terns are subject to harassment and death due to OHV and other vehicular use in this same habitat area. Even if Friends' evaluation of the potential for increased predation due to foredune vegetation were correct, which it is not, Dr. Koteen finds that take would be less with the proposed project than with the status quo no project alternative.

ESHA Designation

In their letter, Friends states, without any evidence, that the LCP's ESHA designation map is not legally part of the LCP, and even if it were, it does not designate Oceano Dunes to be ESHA. Both statements are inaccurate.

As a preliminary matter, in this CDP amendment application, Chapter 3 of the Coastal Act is the standard of review, including Coastal Act Section 30240 regarding ESHA, and not the LCP. As described in depth in the Oceano Dunes ESHA Memorandum in Exhibit 3 of this report, the Commission has a long history of finding the habitats at Oceano Dunes, including the dunes subject to the proposed restoration in this application, to be ESHA. And this determination is in addition to and independent of whatever ESHA status the LCP conveys. In short, per the Coastal Act, which is the applicable standard of review in this case, the dunes are ESHA.

And with respect to the LCP, the LCP includes a comprehensive set of policies regulating development within ESHA in order to implement Coastal Act requirements. First, IP Section 23.11.030 includes a definition of ESHA similar to the Coastal Act,⁹ while also being specific about certain types of habitats that fall under the broader definition:

IP Section 23.11.030: Environmentally Sensitive Habitat Area (Mapped ESHA). *A type of Sensitive Resource Area where plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and development. They include wetlands, coastal streams and riparian vegetation, **terrestrial** and marine **habitats** and are **mapped as Land Use***

⁹ For reference, as described above Coastal Act Section 30107.5 defines ESHA as "any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments."

3-12-050-A3 (Oceano Dunes Dust Control Amendment) Addendum

Element¹⁰ combining designations. Is the same as an Environmentally Sensitive Habitat. (emphasis added)

IP Section 23.11.030: Environmentally Sensitive Habitat Area (Unmapped ESHA). *A type of Sensitive Resource Area where plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and development. They include wetlands, coastal streams and riparian vegetation, **terrestrial and marine habitats that may not be mapped as Land Use Element combining designations.** The existence of Unmapped ESHA is determined by the County at or before the time of application acceptance and shall be based on the best available information. Unmapped ESHA includes but is not limited to:*

- a. Areas containing features or natural resources when identified by the County or County approved expert as having equivalent characteristics and natural function as mapped other environmental sensitive habitat areas;**
- b. Areas previously known to the County from environmental experts, documents or recognized studies as containing ESHA resources;**
- c. Other areas commonly known as habitat for species determined to be threatened, endangered, or otherwise needing protection. (emphasis added)**

And thus, under the LCP, ESHA may be either mapped as ESHA (i.e., mapped ESHA) as a combining designation (which is an LCP construct that identifies overlays and other protections), in which case the policies that affect ESHA affirmatively apply, or, if it's not so mapped, it may still be found to be ESHA under the LCP based on an on-the-ground analysis (unmapped ESHA). In this case, the Park is both mapped as ESHA as well as rising to the level of ESHA (i.e., unmapped ESHA) based on the resources on the ground. The vast majority of the Park (i.e., everything south of Arroyo Grande Creek, other than the active agricultural portions of the agricultural properties) are specifically mapped as an ESHA combining designation per the LUP South County Area Plan's Coastal Planning Area Combining Designation Map. This map was certified by the Commission as part of the LCP's overall certification in 1988. Even if it hadn't been, however, as Friends alleges, as demonstrated in the ESHA memorandum, the Commission's Staff Ecologists have evaluated the resources at Oceano Dunes and find that they rise to the level of ESHA, regardless of its mapped status. That memo states:

All of the habitats within Oceano Dunes meet the definition of environmentally sensitive habitat area (ESHA). The area is teeming with rare vegetation communities and rare plants and animals. It also supports habitat that is especially valuable because of its special nature or role in the ecosystem. The Oceano Dunes habitats are threatened by development and human activities such as off-highway vehicle use. The only natural area in Oceano Dunes that is not considered environmentally sensitive habitat is the beach area of Pismo

¹⁰ Note that references to the Land Use Element are the same as references to the LUP because the LUP serves as the Land Use Element for purposes of the General Plan in the coastal zone.

3-12-050-A3 (Oceano Dunes Dust Control Amendment) Addendum

State Beach between West Grand Avenue and Arroyo Grande Creek. ... Intact coastal dune ecosystems are extremely rare. Oceano Dunes is a component of one of the largest intact coastal dune ecosystems in the world and contains many rare habitats that support a great diversity of plants and animals, many of which are also rare. That is why Oceano Dunes is so unique and special, and a fundamental reason explaining why it is protected under the Coastal Act and the LCPs as ESHA. Experience tells us that maintaining, through conservation, intact natural processes and unfragmented ecosystems is orders of magnitude easier than restoring such ecosystems. At Oceano Dunes there is the opportunity to maintain, restore, and conserve this ecologically sensitive and biodiverse place now. If disruptive activities cease, this ecosystem will require only modest remediation and management. Oceano Dunes is a significant ESHA on the California coast that warrants the protection afforded to it under the Coastal Act and the LCPs.

In sum, any arguments that the vast majority of Oceano Dunes does not qualify as ESHA under the Coastal Act and/or LCP definitions are erroneous.

And finally, Friends asserts that even if Oceano Dunes is ESHA, such a designation conflicts with LCP South County Area Plan Figure 4 and Policy 9, which describe where OHV use at Oceano Dunes is appropriate versus not, and these provisions that allow for OHV use would prevail. The Commission has grappled with this issue before, including in the Commission's March 2021 CDP 4-82-300 review staff report, finding:

On the one hand, the LCP is clear that ESHA is not an appropriate place for such uses, but on the other, the LCP appears to condone same in certain Park locations (e.g., in Area Plan Policy 9 and Figure 4), and alludes to vehicular/OHV use more broadly. In terms of the latter, at least, this appears to be solely in terms of potential future evaluations and future CDP, GDP, and LCP updates, which also applies to Area Plan Policy 9/Figure 4.

While this interpretation is reasonable, and defers to the base CDP for conclusions about what is and is not allowed, arguably, there remains some latent LCP Area Plan conflict with respect to vehicular/OHV use in ESHA. The LCP's own conflict resolution provisions essentially provide that the Area Plans govern in the case of such conflict, but these are all Area Plan provisions, and thus are treated equally. In order to resolve this potential conflict, the Commission must look to the Coastal Act and to interpret the LCP consistent with the Coastal Act, from which it derives its statutory authority.¹¹ This is particularly true in cases where an LCP might allow for something that the Coastal Act does not. Thus, these policies must be read to be consistent with the requirements of the Coastal Act. And Coastal Act Section 30240 clearly does not allow for non-resource-dependent use in ESHA (and vehicular/OHV use is not resource dependent, as described earlier). In addition, neither the Coastal Act nor the LCP allow any use that significantly disrupts ESHA, and vehicular/OHV use does just that. Thus, the Coastal Act prohibits vehicular/OHV use in ESHA, and prohibits

¹¹ Again, see *McAllister v. Coastal Commission* (2009) 169 Cal.App.4th 912,

3-12-050-A3 (Oceano Dunes Dust Control Amendment) Addendum

all use that significantly disrupts ESHA resources. Therefore, to the extent that there may be an internal conflict in the LCP, it must be resolved in a manner that is consistent with the Coastal Act. As a result, while there are confusing and potentially conflicting LCP provisions related to vehicular and OHV use at the Park, when viewed through the lens of Coastal Act consistency, the provisions of the LCP that protect ESHA consistent with Coastal Act requirements must be given effect.

In sum, while some aspects of the LCP raise some ambiguities regarding whether OHV use is allowable in dune ESHA at Oceano Dunes, Friends' conclusion that such ambiguities should be interpreted to mean that OHV use is required at Oceano Dunes is not supported by law.

CDP 4-82-300 Amendment

Friends argues that the Commission's noticing for this hearing violates the Bagley-Keene Open Meeting Act because the proposed amendment "de facto" amends CDP 4-82-300, which is State Parks' nearly 40-year-old CDP for its operation and management of Oceano Dunes, and the notice for this hearing does not provide notice of a permit amendment to CDP 4-82-300.¹² This is inaccurate. State Parks is proposing new development as part of its dust control project, including installation of fencing and dune vegetation, for which it needs CDP authorization. This development does not conflict with the terms and conditions of CDP 4-82-300, which is a separate and distinct CDP with separate and distinct terms and conditions. CDP 4-82-300 establishes the basic operating parameters of Oceano Dunes, including OHV and camping use limits/maximums and delineations of where such recreational pursuits are allowed or not allowed, including to protect sensitive dune and beach environments. However, the CDP does not require that OHV use be allowed: it is permissive of where such recreation may take place rather than being an affirmative mandate. Nothing in CDP 4-82-300 prohibits the removal of dune areas for dust control/dune restoration purposes. Thus, not only does the development associated with the dust control project proposed in CDP 3-12-050-A3 not conflict with CDP 4-82-300, such development is entirely consistent with it, as both CDPs authorize environmental protection through dune restoration.

CEQA and Cumulative Impacts

Friends also argues that approval of CDP Amendment 3-12-050-A3 is unwarranted because the analysis constitutes impermissible "piecemealing" under CEQA.¹³ Piecemealing occurs when (1) the purpose of the reviewed project is to be the first step toward future development, or (2) "when the reviewed project legally compels or practically presumes completion of another action." "There is no piecemealing, however,

¹² Notably, this argument was rejected in a recent trial court decision adopted on December 15, 2021 in *Friends of Oceano Dunes v. CCC, et al.* (Case 20CV-0402).

¹³ As with the above argument related to amendment of the base permit, Friends' cumulative impacts argument was also rejected in the recent trial court decision adopted on December 15, 2021 in *Friends of Oceano Dunes v. CCC, et al.* (Case 20CV-0402).

3-12-050-A3 (Oceano Dunes Dust Control Amendment) Addendum

when projects have different proponents, serve different purposes, or can be implemented independently.”¹⁴

This report fully analyzes the project proposed by State Parks, which is 131 new acres of permanent dust control mitigation, as described above. While the APCD, SAG, and State Parks have indicated that additional dust control mitigations may be needed, including additional acreage retired from vehicular, OHV and camping use and permanently restored as dune habitat,¹⁵ at this time, APCD and State Parks do not know what future dust control measures would consist of, where they would be located, and how many acres would be affected. The parameters of future dust control projects will be developed as the results of the effectiveness of current dust control measures are considered. And most importantly, any future dust control measures would not be a consequence of this project. They would be required after the relevant agencies evaluate ongoing dust pollution emanating from Oceano Dunes and the most effective manner and location to reduce such dust. And those measures would then need to be reviewed on their own for Coastal Act consistency through a future CDP or CDP amendment.

As discussed in more detail in the section on recreational uses above, while the Coastal Act provides strong protections for recreational uses, the reduction of vehicular recreational uses at Oceano Dunes is consistent with, and in fact required by, the Coastal Act. Moreover, the Commission has required OHV uses to be phased out at Oceano Dunes by January 1, 2024. Thus, even if future dust control measures reduced the acreage allowed for vehicular recreational uses in ESHA at Oceano Dunes, such measures would only affect OHV uses until January 1, 2024, and the elimination of such uses in ESHA is fully consistent with the Coastal Act. In sum, although the nature and scope of future dust control measures are unknown, they are not expected to have a significant adverse environmental impact. Thus, Friends’ piecemealing argument is without merit.

Litigation Defense

And lastly, Friends argues, without any analysis, that Coastal Act Section 30620(c)(1) does not authorize the imposition of Special Condition 4, which requires the Applicant to reimburse the Commission if it incurs costs or fees for litigation associated with the Commission’s approval of the Applicant’s permit. As explained starting on page 33 of this report, however, Coastal Act Section 30620(c)(1) authorizes the Commission to require applicants to not only pay a reasonable filing fee but to also reimburse it for expenses incurred in processing CDP applications. The cost of litigation related to processing CDP applications is included within the scope of what applicants may be required to pay. This is supported by the Commission’s regulations, specifically Title 14 California Code of Regulations (CCR) Section 13055(g), which requires the applicant to reimburse the Commission for expenses incurred in processing the permit application, in addition to the application fee itself. CCR Section 13055(g) specifically exempts from this section a requirement that applicants for single-family residences be required to pay

¹⁴ Both from *Aptos Council v. Cty. of Santa Cruz* (2017) 10 Cal.App.5th 266, at 279-80 (internal quotation marks and citations omitted).

¹⁵ As discussed starting on page 32 of this report.

3-12-050-A3 (Oceano Dunes Dust Control Amendment) Addendum

litigation fees and costs, but there is no similar exemption for other types of development. Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its action on this CDP Amendment application in the event that the Commission's action is challenged by a party other than the Applicant and is ordered to pay attorneys' fees.

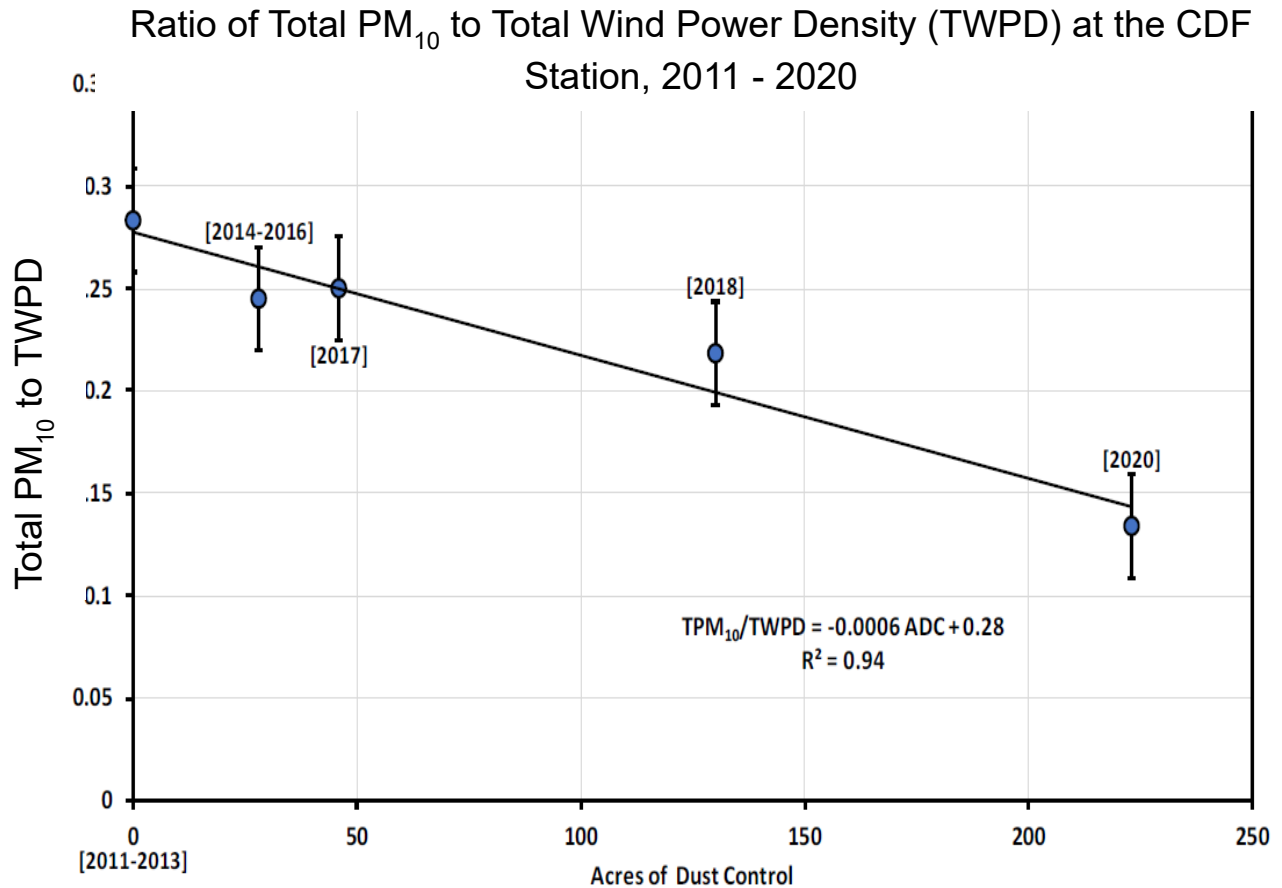
Special Condition 1(b) Modification

Finally, as described in State Parks' project description, including on page 15 of this report and in Exhibit 2, State Parks proposes to install seasonal sand fencing in three discrete locations at West Grand Avenue, Pier Avenue, and Strand Way. While the intent is for Special Condition 1(b) to authorize the installation of this seasonal fencing at all three locations, the condition only mentions the West Grand and Pier Avenue entrances and not Strand Way. To eliminate any ambiguity, and to make it even clearer where the fencing is authorized, Special Condition 1(b) on page 8 of this report is modified to add Strand Way, as follows (with text in underline format showing text to be added):

This CDP also authorizes the installation of seasonal sand fencing near the West Grand Avenue and Pier Avenue entrances and along Strand Way outside of dune areas generally between March and July (see Exhibit 2).

3-12-050-A3 (Oceano Dunes Dust Control Amendment) Addendum

Figure 1: A measured relationship between wind speed and PM₁₀ emissions at the CDF Station. Figure taken from: J. Gillies, E. Furtak-Cole, J. Mejia, V. Etyemezian, "Increments of Progress", Desert Research Institute, January 5, 2021. Figure captions slightly altered for clarity. Wind power density is a close proxy for wind speed that incorporates the effects of air density.



3-12-050-A3 (Oceano Dunes Dust Control Amendment) Addendum

Figure 2: The number of days during the Western snowy plover and California least tern nesting season that individual predators were detected by park personnel charged with predator management, 2015 – 2021, mammals (Figure 2a) and birds (Figure 2b).

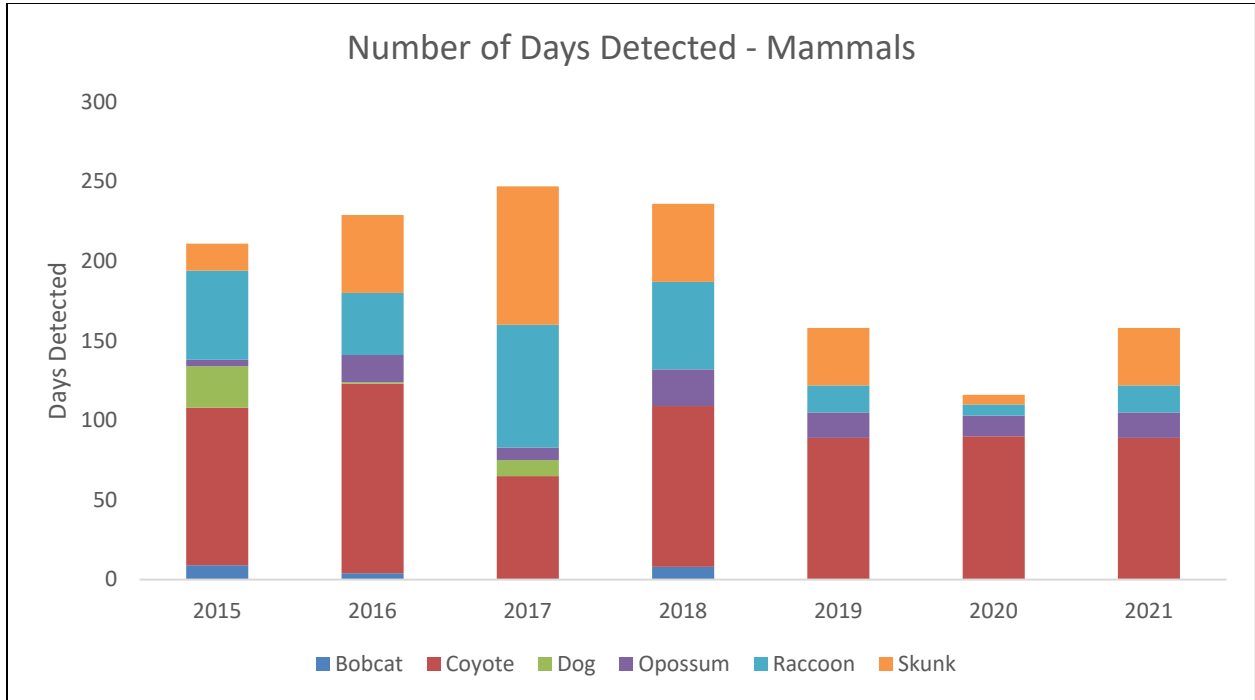


Figure 2a

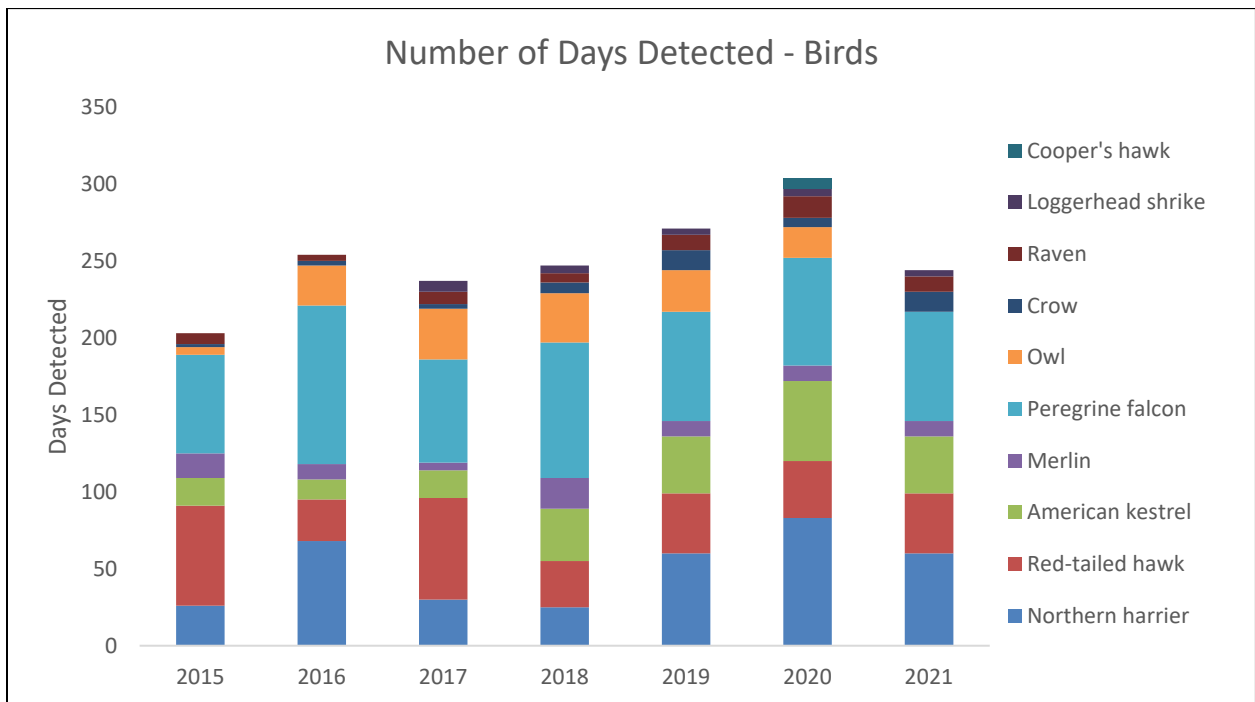


Figure 2b