



Air Pollution Control District
San Luis Obispo County

VIA EMAIL ONLY

January 23, 2026

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Oceano Dunes District
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SUBJECT: Recirculated Draft EIR for the Oceano Dunes District Habitat Conservation Plan

Dear Mr. Glick,

Thank you for the opportunity to comment on the Recirculated Draft EIR (DEIR) for the Oceano Dunes District Habitat Conservation Plan (HCP) prepared by the California Department of Parks and Recreation (State Parks) in support of your application for an Incidental Take Permit (ITP).¹ The San Luis Obispo Air Pollution Control District (District) has reviewed the draft HCP and DEIR, which propose certain activities at the Oceano Dunes State Vehicular Recreation Area (ODSVRA).

The District has no expertise in or authority over biological resource management. Rather, we reviewed the HCP and DEIR focusing specifically on how the proposed activities may interact with dust control projects that are necessary to comply with the Stipulated Order of Abatement in Case 17-01 (SOA).² Our intent in providing these comments is to ensure that efforts to manage air quality and biological resources complement each other rather than come into conflict. We believe these efforts can, in fact, be synergistic. For example, the 48-acre foredune restoration area was established as a dust control project, but it has also proven to be a successful nesting area for protected shorebirds as shown on Map 11d of the HCP.

¹ "Receipt of Incidental Take Permit Application and Draft Habitat Conservation Plan and Draft Environmental Assessment for the California Department of Parks and Recreation, Oceano Dunes District, San Luis Obispo County, California," 90 Fed. Reg. 52993, November 24, 2025.

² San Luis Obispo County Air Pollution Control District Hearing Board, "Order To Modify Existing Stipulated Order Of Abatement," Case 17-01, filed October 16, 2025. Available online at https://storage.googleapis.com/slocleanair-org/images/cms/upload/files/2025%20Fourth%20Amendment%20to%20Stipulated%20Order%20of%20Abatement%2017-01_FILED%2010-16-2025.pdf.

General Comments

Overall, the District is pleased to see air quality impacts are considered in the HCP and DEIR. Regarding the mechanical raking component of the General Facility Maintenance activity (CA-21), we agree that air quality impacts are likely negligible, as long as raking is confined to the camping and open riding area, where the sand surface is already disturbed by vehicular activity. Our comment letter on the 2020 HCP draft³ expressed concerns over the air quality impacts of this activity, however, a study has since demonstrated that mechanical ranking does not increase emissions from sand surfaces that are already disturbed by off-roading. This study was conducted by Desert Research Institute (DRI) and the employed methodology developed by the Scientific Advisory Group (SAG) established under the SOA.⁴

The District also agrees that the Limited Trail Riding activity (CA-42) is likely to have a less than significant impact on air quality. We are encouraged that Dust Control Activities (CA-44) are included in the HCP, and we generally agree with how they are described. The Reduction of Boneyard and 6 Enclosures activity (CA-50) will be discussed in more detail later, but we are encouraged that the HCP's discussion of this activity always includes the caveat that it would be implemented only "if opening the area is consistent with the requirements of other programs," which we take to include compliance with the SOA.

Disposition of the Southern Enclosure

The Southern Enclosure is the approximately 300-acre area that State Parks calls the "Plover Enclosure" in other contexts, including the Annual Reports and Work Plans (ARWPs) prepared under the SOA. For at least two decades, the Southern Enclosure has been closed to vehicles and pedestrians at least seasonally to protect western snowy plovers (SNPL) and California least terns (CLTE), two special status bird species. Until 2021 vehicle and pedestrian access to the Southern Enclosure was allowed from October 1 through the end of February, but the area has been closed to vehicles and pedestrian year-round since then. The HCP and DEIR—as well as the related Environmental Assessment (EA) prepared by the U.S. Fish and Wildlife Services in accordance with the National Environmental Policy Act—are not clear about this and tend to discuss the Southern Enclosure as though vehicular activity and camping continue to be allowed there seasonally. Examples include, but are not limited to:

- HCP page 2-15: "Each year, from approximately March 1 through September 30 during the SNPL and CLTE breeding season, CDPR encloses approximately 300 acres of Oceano Dunes SVRA open riding area plus approximately 68 acres in North Oso Flaco Enclosure within a 6-

³ San Luis Obispo County Air Pollution Control District, "Subject: Draft Environmental Impact Report (EIR) for the Oceano Dunes District Habitat Conservation Plan (HCP) (State Clearinghouse No. 2018011012)," May 28, 2020. Available online at https://storage.googleapis.com/slocleanair-org/images/cms/upload/files/APCD_HCP_DEIR_CommentLetter.pdf.

⁴ J.A. Gillies and G. Nikolich, "Evaluation of Potential Changes in Dust Emissions due to Mechanical Raking of ODSVRA Beach Areas," Attachment 05 to California Department of Parks and Recreation, Off-Highway Motor Vehicle Recreation Division, "Oceano Dunes State Vehicular Recreation Area Dust Control Program: Provisional Final 2025 Annual Report and Work Plan," September 26, 2025. Available online at https://storage.googleapis.com/slocleanair-org/images/cms/upload/files/2025_ARWP_Provisional_Final_Attachments_reduced_ALL.pdf

foot-tall seasonal enclosure.” This paragraph later clarifies that “The seasonal enclosure and the adjacent shoreline fencing remained in place 2021 to 2024 and was closed year-round during this period,” but even this is not entirely accurate since the fences have remained in place beyond 2024. As discussed below, the earliest the fences could be removed and vehicular access restored is October 2026.

- HCP page 4-50: “Public access between Oso Flaco and East Boneyard is allowed via a gate (Boneyard gate), but this access is currently inaccessible during the SNPL breeding season since it is enclosed within the southern end of East Boneyard Enclosure. [Emphasis added.]” This statement implies that the enclosure fences are removed seasonally.
- HCP page 5-5: “Following the SNPL and CLTE breeding season (i.e., between October and February), camping, street-legal vehicles, and OHVs are allowed in the Southern Enclosure area (see section 2.2.2.1.1).” This paragraph also states that “staff place material in bare areas of the 6, 7, and 8 Enclosures to enhance SNPL breeding habitat,” however, State Parks staff have communicated to the District that this has not occurred since the area was closed year-round in 2021.
- DEIR page S-12: “Under this alternative, the proposed reduction of the Southern Enclosure identified in CA-50 would be eliminated from the HCP; the 6 Enclosure (62 acres) and the East Boneyard Enclosure (47 acres) would remain part of the Southern Enclosure and continue to be closed during the nesting season (March 1 – September 30) and open during the winter season (October 1 – February 28). [Emphasis added.]”
- DEIR page 2-44, Figure 2-6: The legend indicates that the Southern Enclosure is “Seasonally open to dogs, horses, camping, and OHV riding from Oct 1-Feb 29.”
- DEIR page 4-16: “These two areas [6 Enclosure and East Boneyard Enclosure] are enclosed seasonally for 7 months of the year (March 1 through September 30) to provide protected nesting habitat for SNPL and CLTE.”
- DEIR page 9-16: “Currently, the open riding area open to OHV use is 1,138 acres, which includes approximately 300 acres that are seasonally closed for nesting habitat (Table 8-4).”

In these examples and elsewhere in the HCP, DEIR, and EA, **the Southern Enclosure is portrayed as currently open to vehicles on a seasonal basis, when, in fact, vehicles have not been allowed in the area since 2021**. This reality is occasionally acknowledged in the documents, but generally only in footnotes and parentheticals, and the alternatives analyses within the documents nonetheless assume that seasonal access has continued.

Understanding the disposition of the Southern Enclosure is important for at least three reasons:

1. Context for Biological Trends. State Parks tracks various statistics related to SNPL and CLTE including the number of nests, breeding pairs, and fledged chicks. The year-round closure of the Southern Enclosure has resulted in the development of hummocks and the growth of dune vegetation; these changes provide dust control benefits but, according to State Parks, could also degrade habitat for SNPL and CLTE. The trends in biological indicators of these species should be interpreted with accurate knowledge of the status of the Southern

Exclosure in mind. While the new hummocks and vegetation appear to have changed nesting patterns, it is not clear from looking at the graphs in the HCP that long-term trends in biological indicators have been adversely affected.

2. Alternatives Analysis. As required by statute, the DEIR evaluates various alternative projects. The analysis uses seasonal management of Southern Exclosure as the baseline or current condition of this area; however, by the time the HCP and DEIR are approved, the area will have been closed to vehicles for at least 5 years (i.e., since 2021 through at least 2026). Thus, the analysis of alternatives may be defective. For example, DEIR section 9.2.3, Alternative 3, "Permanent Year-Round Southern Exclosures," states that "This loss of recreation opportunity under the Permanent Year-Round Exclosure Alternative would combine with the Dust Control Program recreational acreage reduction to potentially create a significant and unavoidable cumulative loss of recreation opportunity." However, the area is already closed, so there would be no new loss of recreation opportunity.
3. Air Quality Impacts of CA-50. The air quality impact of CA-50—the opening the 6 Exclosure and Boneyard to year-round vehicular activity—will be underestimated if the baseline is incorrectly assumed to be seasonal management. Under the SOA, State Parks must achieve certain emission reductions by October 2028,⁵ so any increase in dust emissions associated with CA-50 will need to be offset elsewhere in the Park in order to remain in compliance with the SOA.

Reduction of the Boneyard and 6 Exclosures (CA-50)

The District has concerns with CA-50, the planned reduction in size of the Southern Exclosure. As discussed above, the entire Southern Exclosure has been closed to vehicles and camping since 2021, though it previously was open to these activities seasonally. While the closure was unrelated to air quality, it nonetheless has had beneficial impacts on air quality, and State Parks has therefore sought to "credit" the resulting emission reductions toward achieving the SOA-mandated emission reduction goal. The 300-acre closure is thus an integral part of State Parks' most recent ARWP,⁶ and for this reason the District's approval of the ARWP included a condition requiring that "If the [Southern] Exclosure area, in whole or in part, is reopened to public vehicular access, State Parks shall simultaneously implement District-approved dust controls sufficient to offset the resulting increase in emissions."⁷

⁵ San Luis Obispo County Air Pollution Control District Hearing Board, "Order To Modify Existing Stipulated Order Of Abatement," Case 17-01, filed October 21, 2024. Available online at https://storage.googleapis.com/slocleanair-org/images/cms/upload/files/Modified%20Stipulated%20Order%20of%20Abatement%2017-01_FILED%2010-21-2024.pdf.

⁶ California Department of Parks and Recreation, Off-Highway Motor Vehicle Recreation Division, "Oceano Dunes State Vehicular Recreation Area Dust Control Program: Provisional Final 2025 Annual Report and Work Plan," September 26, 2025. Available online at https://storage.googleapis.com/slocleanair-org/images/cms/upload/files/2025ARWP_ProvFinal_20250926_reduced.pdf.

⁷ San Luis Obispo County Air Pollution Control District, "Conditional Approval of California Department of Parks and Recreation's 2025 Annual Report and Work Plan in Response to Stipulated Order of Abatement Number 17-01," October 16,

Thus, to simply return the Southern Exclosure to *seasonal* vehicular access will require State Parks to implement offsetting emission reductions (i.e., dust control projects); to additionally open portions of the area to *year-round* vehicular access will require even more new dust controls. These controls would likely consist of installing vegetation in bare sand areas and/or reducing the area of the ODSVRA available for off-roading. Given the low emissivity of bare sand areas outside of the current riding area, the District is skeptical that State Parks can comply with the SOA while implementing CA-50 unless further restrictions are imposed on vehicular access elsewhere in the Park.

According to the HCP, the primary motivation for opening the Boneyard and 6 Exclosure to year-round access is to enhance recreational opportunities, but this may amount to “robbing Peter to pay Paul” if recreational opportunities must be lost elsewhere in the Park to maintain compliance with the SOA. The EA fails to account for this possibility in its analysis of the impact of CA-50 on recreation (DEIR Section 8.3). Therefore, the conclusion that CA-50 will have a beneficial impact on recreation may be erroneous.

Regarding the analysis of air quality impacts of CA-50, Mitigation Measure AIR-1 is proposed to “ensure emissions from the Oceano Dunes SVRA, inclusive of CA-50 activities, continue to comply with SOA #17-01.” Overall the approach in AIR-1, as described in the DEIR, appears adequate; however, please note that, per the District’s approval of State Parks’ 2025 ARWP, offsetting dust controls are required to be installed **before** opening any of the Southern Exclosure to vehicular access, not after.

Finally, the District questions the rationale for rejecting the project alternatives that would leave the Southern Exclosure intact, with or without seasonal vehicular access. The alternative with CA-50 removed from the list of activities (“Alternative 2: Reduced Disturbance in Dust Emission Areas”) was rejected because it allegedly conflicts with the 2005 Consent Decree between State Parks and the Sierra Club and “thus does not achieve the project objective of facilitating implementation of legal settlement conditions and obligations.” (DEIR page 9-13.)

The District has reviewed the consent decree,⁸ and while reducing the extent of the 6 Exclosure is *consistent* with the terms of the consent decree, we did not find language that *requires* it. The third term of the consent decree states, in part, that “State Parks shall support a northern [Southern Exclosure] boundary of Distance Marker Number 7 in the HCP Process, notwithstanding the terms of this Consent Decree.” State Parks appears to interpret this as meaning they are required to reduce and ultimately eliminate the 6 Exclosure. However, this interpretation stands the intent of the consent decree on its head. The consent decree stems from a lawsuit brought by the Sierra Club alleging that State Parks was violating the Endangered Species Act by allowing a take of SNPL and CLTE without a valid ITP. Protecting these species by expanding the Seasonal Exclosure to its present

2025. Available online at <https://storage.googleapis.com/slocleanair-org/images/cms/upload/files/2025%20ARWP%20Final%20Conditional%20Approval.pdf>.

⁸ U.S. District Court. 2005. Sierra Club v. Rusty Areias etc. et al. Consent Decree. Central District of California. Case No. CV 01-10598-GHK.

boundaries is a key element of the consent decree. Understood in this context, the third term *allows* State Parks to propose a northern boundary no further south than Marker 7 in the HCP, but it does not preclude leaving the Southern Enclosure as it is today.

In fact, in their comments on State Parks' 2018 Preliminary Scoping Report for the HCP, the Sierra Club specifically opposed the proposal to shrink the Southern Enclosure. They state, "The proposed alternative that would reduce current nesting and breeding snowy plover and least tern habitat must be eliminated from further consideration and, instead, the [U.S. Fish and Wildlife] Service should consider expanding the protected area and making the protection year-round." (DEIR Appendix A, page A-89.)

Finally, regardless of how the third term of the consent decree is interpreted, it applies only to the 6 Enclosure, i.e., the northernmost section of the Southern Enclosure. There is nothing in the consent decree about the Boneyard Enclosure, so compliance with the consent decree cannot be used as a rationale for removing that area from the Southern Enclosure.

Habitat Manipulation

The HCP contemplates habitat manipulation activities within the Southern Enclosure that could have air quality impacts, but these impacts are not considered in the DEIR. For example, the description of CA-12b on HCP page 2-24 states that State Parks "anticipates needing to remove during the non-breeding season the non-native sea rocket and larger dune hummocks in heavily vegetated areas where nesting has reduced in the Southern Enclosure." The scope of such manipulation could exceed 5 acres/year. Certain Avoidance, Minimization, and Mitigation Measures (AMMs) also plan for these activities, specifically SNPL AMM 46 (HCP page 5-24 and Table 5-2) and CLTE AMM 37 (HCP page 5-36 and Table 5-3). The development of surface roughness (i.e., vegetation) and topography (i.e., hummocks) in the Southern Enclosure has reduced the potential for dust generation under high winds and thus improved air quality. Therefore, undoing these changes will necessarily have air quality impacts, which the DEIR has neglected to consider. DEIR Section 5.3 discusses the potential increase in vehicle trips related to CA-12b (concluding they their impact is insignificant) but no mention is made of habitat manipulation. The DEIR should be revised to consider these air quality impacts.

New Dune Vegetation

The description of Dust Control Activities (CA-44) on HCP page 2-42 states that "for the purposes of this HCP, Dust Control Program covered activities include: *Continued implementation of annual Dust Control Program activities ... Supplemental foredune planting ... New non-foredune vegetation plantings and seasonal and/or temporary dust control measures ... Preservation of foredune vegetation in the Southern Enclosure ... New track-out control.*" The District agrees that these are ongoing and/or possible future dust control activities that are or may become necessary to achieve compliance with the SOA and air quality goals. However, not mentioned is the possibility of new foredune vegetation plantings *outside* of the 48-acre foredune restoration area. No such projects are currently being considered, but it is possible that such planting could become necessary in the future, especially if

dust controls already in place are scaled back (for example, as envisioned in CA-50). As quoted above, the draft HCP does not explicitly state that the list of Dust Control Program covered activities is all-inclusive. Therefore, if approved, the HCP should not be interpreted to preclude the possibility of foredune planting outside of the current 48-acre area. Simply put: the HCP should not be used to limit the scope of future dust control measures—all possible tools should remain available.

Other Comments

- DEIR page 5-9 refers to District “Rule 402, Nuisance, Visible Emissions.” Rule 402 is simply Nuisance; Rule 401 is Visible Emissions.
- DEIR page 5-11 states that “The 2022 ARWP showed that, under certain modeling scenarios, State Parks had achieved the SOA’s initial target to reduce 24-hour PM10 mass emissions by 50%.” This statement should be struck from the DEIR as the modeling scenarios that it refers to were found to be unrepresentative, “apples-to-oranges” comparisons, and not relevant to determining compliance with the SOA. Key assumptions in the modeling for 2022 ARWP are no longer used in the current model.
- DEIR page 5-18 states that “the results of the modeling indicated Oceano Dunes SVRA is in compliance with the SOA, as amended.” While this is the conclusion of the most recent ARWPs, please note that the District has not yet concurred. The District’s position is that State Parks may or may not be in compliance with the SOA’s emissions reduction goal—additional information is needed to make the assessment. Under the SOA, State Parks has until October 16, 2028, to obtain the approval of the District’s Hearing Board that the approved excess emissions goal has been met.
- DEIR page 5-19 states that State Parks “coordinated with the SAG and the DRI to adjust the 2025 ARWP excess emissions model to reflect a seasonal recreation status for the plover enclosure.” This may not be accurate and may need revision. In conversations with SAG members, they expressed no knowledge of the HCP and DEIR and stated they were not consulted. The District needs more information to assess the validity of the emissions calculations in this section and takes no position on them at this time.
- Regarding DEIR Section 5.3.2, the District commends State Parks for thinking ahead about the potential emissions changes related to CA-50, but we need more information to assess the calculations in this section.
- DEIR Section 8.2.3 begins “The California Coastal Act defines ‘coastal-dependent development or use’ to mean any development or use that requires a site on, or adjacent to, the sea to be able to function at all (PRC § 30101). CDPR considers beach- and dune-oriented recreational opportunities to be coastal-dependent recreation activities.” It then includes “beach and coastal dune vehicular recreation” in a list of coastal-dependent recreational activities. However, merely appending the phrase “coastal dune” to an activity does not thereby confer special status or protections to that activity. While certain activities listed in this section—fishing, viewing marine wildlife, and kite boarding—are indeed coastal-dependent, this is because they require proximity to the sea to function at all. In contrast, vehicular recreation is not dependent on the coastal environment, nor does it become so

through an act of labeling or stipulation. By logic of the DEIR, nearly any activity that can occur on a beach could be defined as coastal-dependent and entitled to the protections and privileges of the Coastal Act and/or CEQA.

We point this out because later in Section 8.3 the document defines as a significant environmental impact anything that would "Substantially limit, reduce, or interfere with established coastal recreational opportunities." Then in Chapter 9, alternative projects are considered and rejected specifically because of significant impacts on coastal dune vehicular recreation. Such arguments are question begging, or circular, and should be rejected.

Conclusion

Again, thank you for the opportunity to comment on the draft HCP and DEIR. The District continues to believe that air quality objectives can be met while preserving historical recreational opportunities at the ODSVRA, including off-roading. If you have any questions regarding these comments, feel free to contact me at (805) 781-4656 or via email at ktupper@co.slo.ca.us.

Sincerely,

A handwritten signature in black ink, appearing to read 'Karl A. Tupper', followed by a long horizontal flourish line.

KARL A. TUPPER
Executive Director & Air Pollution Control Officer
San Luis Obispo County Air Pollution Control District