

## Off-roaders Fire Litigation Confetti Cannon

**Throw-everything-at-the-wall lawsuits try to hold back the dawn at Oceano Dunes**



As we go to digital press, the American Sand Association and Friends of Oceano Dunes have filed two lawsuits against the California Coastal Commission. By the time you read this, there will probably be more.

The lawsuits trot out the threadbare greatest hits of the off-road lobby, including the debunked claim that the ODSVRA is “a major economic driver for the Central Coast, with an annual impact of \$243 million,” and the claim that the

Air Pollution Control District’s conclusion on the central role of OHVs at the dunes in the creation of the region’s terrible air quality is “unreliable.”



To her everlasting credit, the *Tribune* reporter on the story did not just summarize the claims of the lawsuits and call it a day but talked to a lawyer not in the employ of the off-road lobby, putting the legal arguments to him in the form of questions, which he simply answered. (No, the Coastal Commission’s “revision to the Oceano Dunes permit did not require an environmental impact review,” and yes, the commission allowed for more than adequate public review.)

The litigants also claim that the OHV ban violates the California Environmental Quality Act (CEQA). Ever since the first drafts of State Parks’ Habitat Conservation Plan and Public Works Plan for the dunes, a regulatory wonderland has been conjured up out of two irrelevant sentences in a CEQA appendix to create the fabricated category of “coastal recreational resources.” This is the basis of the claim that anything that impinges on the alleged right of dune buggies to frolic wherever they wish constitutes an *environmental* impact on *recreation*.

As we have pointed out previously, this, and only this, is what CEQA has to say about the potential environmental impacts of a project as they may relate to recreation:

## XV. RECREATION.

- a) *Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?*
- b) *Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?*

That's it. There is no there there. As the obliging lawyer told the *Tribune*, "if the commission had prohibited human usage of the beach altogether, that might be problematic. But limiting one type of usage...is not a negative recreational impact that is cognizable by CEQA."

But that particular exercise in regulatory fantasy pales in comparison to litigants' assertion that the public and State Parks had no idea that a plan to phase out OHVs was in the works, to wit: "At its July 11, 2019, public hearing on Oceano Dunes SVRA, the [Coastal Commission] never mentioned closing the SVRA to OHV recreation."

The off-roaders jammed that July 2019 meeting, packing the room, spilling out down the hallway and into the hotel lobby and filling half the parking lot so that, for hours on end, they could step up to the podium and rail against the Commission and their staff report's plan to remove OHVs from the dunes. In public. On tape. After weeks of sending out alerts to their members about the plan, and front-page headlines in the *Tribune*. The Commission concluded the meeting by directing State Parks to include a scenario for the removal of OHVs in its Public Works Plan.

The off-road folks spent the next two years sending out alerts and fundraising off that directive.

But now, for purposes of litigation and billable hours, none of that happened.

- Uses in ESHA must pass the two-part test; if they don't pass, then not allowed
- Under Coastal Act/LCPs, CANNOT allow uses in ESHA for other reasons (e.g., because there are habitat enhancement programs or mitigations)
- NCCPs and HCPs CAN allow uses that disrupt habitat for such other reasons; does NOT satisfy Coastal Act/LCP ESHA requirements
- Coastal Act/LCPs protect underlying resources from recreational overuse and degradation

Alameda Item 2 - OCEANO DUNES CDP Review - Slides 18

**What part was unclear?** The Coastal Commission spelled out the meaning and import of Environmentally Sensitive Habitat Areas in a single Powerpoint slide in its March 18 meeting. Case closed.

## To Sum Up

If you missed the March 18 meeting of the California Coastal Commission, here's the deal

For those of you who don't make a habit of attending twelve-hour virtual meetings, here's what you need to know about what transpired on one of the most significant days in the history of the Oceano Dunes and California coast. Over the coming months, as off-roaders make claims on social media and lawsuits fly, you'll want to print out this handy summary and stick it on a bulletin board for reference.

- No, the Coastal Commission is not bound by "balancing" provisions when protecting Environmentally Sensitive Habitat Area.
- Yes, vehicular activity is degrading the beach and dunes, this is the primary cause of hazardous levels of dust emissions, and we don't need a study of night riding to add to the mountain of evidence that this causes disturbance for animals due to light and noise.
- No, off-road recreation does not require beach and dune habitat in order to occur, the activities permitted in the ODSVRA's coastal development permit are not frozen forever in 1982, and the senator who wrote the recent re-authorization of California's off-road law agrees.
- No, the Coastal Commission's vision for the future of the dunes doesn't close the park to all vehicles, and ADA access can be provided in the less sensitive northern part of the park as part of new car and beach camping between Grand and Pier Avenues. And no, the fact that tides go in and out does not rule out camping there.
- No, the OHV trust fund money that now goes to habitat restoration at the dunes would not be needed in the absence of OHV impacts causing the damage that makes those expenditure necessary.
- Yes, the same predictions of economic Armageddon were made for Pismo Beach when that city banned cars from its beach.
- Yes, the former head of the Air Pollution Control District noted the history of State Parks' "refusal to comply with...virtually every agency charged with protecting public health and the environment."
- Yes, the off-roaders responded to all of the above by decrying all the stupid liars on the Coastal Commission's staff and "biased scientists" who have come to conclusions they don't like. Former Grover Beach Mayor Debbie Peterson, displaying the chops that got her yanked off the APCD board of directors by her city council, earned a rebuke from the Chair of the Commission and an explanation of the need for decorum in a public meeting.
- Yes, "it's not even a close call. The fact that there are arguments on the other side doesn't make the two sides equal."
- Per the commission's executive director: "In the end, we can't compromise on the law or core values. And that's where we've arrived."

Of course, this is a handful of highlights. For the full effect, you can't beat settling in with the video record of [the special hearing to consider permit review for the Oceano Dunes](#).

---