

A Formal Complaint by Richard C. Tobin Requesting Investigation of Violations of the California Coastal Act Committed by Friends of the Dunes and the Humboldt County Planning Department

1. On December 15, 2006, Friends of the Dunes created a Plan of Operations and submitted it to the Planning Commission the same day. (Attachment 1)
2. On February 2, 2007, FOD submitted a Restoration and Signing Plans at the Humboldt Bay Education Center and Reserve (undated) to the Planning Commission. The Restoration and Signing Plans was not a plan, it outlined the conceptual framework to be used when crafting FOD's initial Restoration Plan after the lot-line adjustment was approved. Restoration activities were to be conducted according to the Restoration and Signing Plans until a Restoration Plan was adopted by the FOD board of directors. (Attachment 2)
3. On April 5, 2007, The planning commission heard Friends of the Dunes Coastal Development Permit and Conditional Use Permit Lot Line Adjustment and Special Permit CDP-06-49/CUP-06-14/LLA-06-08/SP-06-71. (Attachment 3)
4. FOD did not submit documentation showing the location of the Federally listed rare plants. (Attachment 4)
5. FOD did not submit a Wetlands Delineation & Environmentally Sensitive Habitat Area Survey. (Attachment 4)
6. Friends of the Dunes website lists the following, "Other rare and endangered plants on their property. (Attachment 5)
 - (a) Pink sand-verbena.
 - (b) Humboldt Bay owl's clover.
 - (c) Point Reyes bird's-beak.
 - (d) dark-eyed gilia.
 - (e) American glehnia.
 - (f) western sand spurrey.

(g) sea-watch.

7. Each of these plants is in the California Rare Plant Rank and meet the definitions of California Endangered Species Act of the California Department of Fish and Game Code, and are eligible for state listing. Impact to these species or their habitat must be analyzed during preparation of environmental documents relating to CEQA. (Attachment 6A-D)
8. On April 5, 2007, CDP-06-49 was approved by the Planning Commission.
9. In January 2008 restoration began on 61 acres of FOD property and on the Stamps property. (2009 Restoration Progress Report) Restoration activities in 2008 were conducted under the guidance of the Restoration and Signing Plans. (Attachment 7)
10. Wetland restoration is not included in the Restoration and Signing Plans nor in CDP-06-49.
11. The Restoration Plan for Friends of the Dunes, Humboldt Coastal Nature Center, December 2008 is released. (Attachment 8)
12. I quote from the 2008 Restoration Plan, “ The first step will be to inventory and map (for GIS applications) the extent of invasive species across the project areas, the location of Federally listed and state rare plant species and general locations of cultural sites if any.”

Beach layia (*Layia carnosa*) and the Humboldt Bay Menzies' wallflower (*Erysimum menziesii* ssp. *eurekaense*) were the only Federally listed Endangered Species included in their Restoration Plan. (Attachment 9A)

13. In the spring of 2008 the Restoration Manager (Emily Walter) mapped areas with visible Menzies' wallflower populations. A 1997 USFWS survey was used to identify beach layia populations. Invasive species located within the Bachofer and Watson properties were estimated from an aerial photograph. (Attachment 9B)

There is no evidence Emily Walter was qualified to map any sites, interpret aerial photos to identify invasive species nor, for that matter, Layia and Wallflowers. Walter also failed to survey the property for the plants listed in 6 above.

14. There is no evidence that FOD's property was mapped for endangered species by professionally qualified and licensed individual.

15. Restoration activities began before the extent of Menzies' wallflower populations, visible and dormant, Beach layia and the plants listed in 6 above were properly mapped. The likelihood is that Menzies' wallflowers, layia and dark-eyed gilia were trampled or disturbed during restoration activities. **This was a violation of their CDP.**

16. FOD's 2008 restoration activities did not comply with the Conditions of Approval. (Attachment 10) **This was a violation of their CDP.**

17. The Introduction to the 2008 Restoration Plan, reads, " This restoration plan will launch activities at the Humboldt Coastal Nature Center (HCNC) starting in 2008 and guide those activities until 2010, upon which time this plan will be reviewed and updated. The plan addresses threatened and endangered species habitats' and also identifies monitoring methods and schedules in relation to restoration activities."

The authors required restoration activities to comply with the 2008 Restoration Plan until 2010 upon which time the 2008 plan became obsolete. The 2008 Restoration Plan has yet to be updated. For the last eight years FOD has conducted restoration activities without a valid restoration plan. **This is a violation of their CDP.**

18. The Introduction to the 2008 Restoration Plan continues, " This plan is consistent with agreements entered into by Friends of the Dunes (FOD) and the various funders of the project (Appendix 1). The portions of this plan occurring on the Stamps Family Trust property, where FOD has a restoration easement, must be submitted to the family for approval prior to implementation."

The FOD did not follow the plan therefore all the restoration activities since 2010 may not be in compliance with their grantors demands and, in fact may, be contrary to their requirements.

19. FOD claims they did not know their 2008 Restoration Plan was anything other than a guide. (Attachment 11)

20. The claim that they thought the 2008 Restoration Plan was only a guide rings hollow and is utterly unbelievable.

a. Tamara Gedik, a Planner in the Arcata office of the California Coastal Commission has been on FOD's board of directors since at least March 2007. (Attachments 12&13)

b. Trevor Estlow, the Humboldt County senior planner who, in 2007, processed FOD's CDP06-049 application was on FOD's board of directors from March 2010 until 2013. (Attachments 14&15)

21. Again from the 2008 Restoration Plan, Implementation Plan Section:

a. "Restoration activities will begin on 32.5 of the 76 collective acres of the restoration focal area. Manual labor for invasive vegetation control will be provided by community volunteers, California Conservation Corps (CCC) crews, High Rock Conservation Camp, California Department of Forestry and Fire Protection (CAL FIRE) crews. Access to the site will be from the main trailhead at 220 Stamps Lane. If vehicle access is needed, the coastal sites will be accessed from Lupin Drive along the HBMWD water line road near the eastern edge of the property."

b. "Manual removal methods will follow those outlined in Pickart and Sawyer (1998)."

The above paragraphs are directive in nature.

22. From the 2008 Restoration Plan

a.1 “Areas of European beachgrass shown in Exhibit 5 are currently stabilizing large amounts of sand that could move into neighboring lands if the grass were to be removed. These areas are under consideration to manage as shrub/forest areas. Details of how this will be carried out will require an amendment to this plan.” (Exhibit 5 is my Attachment#16A)

a.2 Exhibit 16A depicts areas of European beach grass on the eastern edge of FOD’s property. It does not identify the areas under consideration”.

a.3 FOD has removed European beach grass from those depicted areas. **The removal of European beach grass from this area is a violation of their CDP.** (Attachment 16A1)

b. “Removal of European beachgrass will be conducted with repeated digs of both above ground stems and buried rhizomes to a depth of approximately 10 to 12 inches. It is important that European beachgrass be dug to sufficient depth to remove as many of the rhizomes as possible. At the grass is dug, it will be gathered into piles. Grass piles will be burned as soon as they are dry, ... too long.” (Pickart Sawyer 1998)

(1) European beach grass was pulled from the foredune area on Saturday, November 19, 2018. FOD did not dig out the grass to a depth of 10 to 12 inches. There is no evidence of any digging. Plants were pulled out at surface level and placed on top of piles that has been there a very long time. There are no rhizomes on the end of any of the removed plants. Stubs of the plant can be readily seen in the treated area. Hand digging around the base of the plants to a depth of one inch revealed rhizomes still attached to the stump. (Attachments 16B-D)

(2) The European Beachgrass (1) has been improperly removed and **is a violation of their CDP.**

(3) The Restoration Plan has not been amended to include management of shrub/forest areas.

(4) There are many scattered piles of European Beach Grass through the area. These piles have been dry enough to be burned for years. (Pickart Sawyer 1998) (Attachments 16E&F) **This is a violation of their CDP.**

23. From the 2008 Restoration Plan, Annual Grasses Section:

a. “Invasive annual grasses have not been mapped on the HCNC property, but do exist in large quantities with some areas being denser than others. Fields to the east and northeast of the property, as well as along the Highway 255 corridor, contain extensive annual grass populations and seed sources.”

b. “Funding is needed to thoroughly assess the extent and impact of annual grasses and to determine best management practices. Thus, management of annual grasses within the focal area is being postponed for review and will be included in future revisions of this plan.” There have been no revisions to the expired 2008 Restoration Plan.

c. It is now 2018, the 2008 Restoration Plan has yet to be updated yet FOD has been removing Annual Grasses since 2013 and there is no evidence the removed grasses have been immediately placed in plastic garbage bags for disposal off site. (Attachments 17A-D) **The removal of Annual Grasses before the Restoration Plan was updated is a violation of their CDP.**

24. FOD’s CDP06-49 States, “There are mapped wetlands as well as sensitive species located on the NR portion of the properties. These areas are to be avoided during all beach and dune restoration work,” and “Any wetlands identified on site are to be avoided during all beach and dune restoration work”. (Attachments 18A&B)

25. Each of FOD's Annual Restoration Reports illustrates the areas where restoration activities took place. If you plot, on one map, the extent of restoration activities for each of the last years and compare it to the National Wetlands Inventory **it is evident FOD has conducted restoration activities in the mapped wetlands.** (Attachments 19, 20&21)

Either their Restoration Manager is not qualified to supervise restoration activities and/or FOD doesn't care. This also reflects FOD's board of directors inability or unwillingness to ensure the Friends of the Dunes abides by its CDP. In any event **this is a violation of their CDP.**

26. Dark-eyed gilia.

a. In mid November 2018, Carol Vander Meer, the former Executive Director of Friends of the Dunes, (Attachment 22A) took me on a walking tour of the dunes. The subject of dark-eyed gilia came up and I asked if any were on FOD's properties. She said yes, adjacent to trail edges. Carol immediately stopped and examined our trail to locate some. None being found we continued the tour.

b. The Restoration Manager, Jess Barger, penned the following article in the summer issue of Friends of the Dunes' newsletter, Dunesberry. (Attachments 22B, C&D)

"Walking along one of our trails, you may not notice the ankle-high, tiny lavender flowers that are produced by Darkeyed gilia, *Gilia millefoliata*, from May to June. Rarely getting larger than an adults pinky nail, the flowers are striking if you take a second to look at them up close, ideally with a hand lens. They prefer slightly disturbed areas, which is why you find them next to the trail, and why the PG&E Fairhaven Substation had them at their site summer of 2017. Construction in the area has by now removed the population, and gilia is a rare listed plant species, which means PG&E is required to help make up for that loss; enter Friends of the Dunes. About a year ago, we officially began a mitigation project with PG&E and collected gilia seeds from the Fairhaven Substation site before they fell from the dried, cup-like petals. By collecting the seeds that would have been destroyed and spreading them on our property, we were able to "save" that population and its genes, and therefore their genetic strength. And we didn't

stop there! Just spreading seeds with the hope some of them make it is not enough of a mitigation effect to make up for the loss of an established population. There needed to be a little more effort put in to ensure that the mitigation protects as much or more habitat and species as was lost to the construction. We are slowly but surely pulling, or more accurately plucking, invasive annual grasses from a designated site on our property to ensure the Gilia has the best chance of doing well on our site. This can be tedious work; grass grows in and through native plants that we don't want to remove, and almost every blade needs to be removed one at a time. Once as much of the grass has been removed as possible, we will spread the seeds from last summer, some of them in monitoring sites, and wait to see the carpet of lavender that will emerge next spring. (As gardeners can attest) Weeding can be back-breaking, but we're happy to do it! Our interns and Project Manager have been pulling as much as possible before all the grass seeds drop, and we will continue treating the area until 2020, when we will have increased the gilia population, and reduced our invasive grass populations in a site that is also occupied by Humboldt Bay Wallflower and Beach Layia. Overall, this has been a great opportunity to improve a 2-acre area of our dune system."

27. This article in the Dunesberry and what I learned on my walk with Carol Vander Meer convinces me that Friends of the Dunes plays by its own rules

a. The hiring their land out as a mitigation site for PG&E's mitigation needs is "new development" and requires a CDP modification. (Attachment 23A)

b. Carol Vander Meer and Jess Barger knew dark-eyed gilia, a protected species, was on the property next to trails and could be trampled/wiped out by visitors.

c. Jess Barger wrote that she has been pulling annual grass from PG&E's mitigation site.

d. Jess Barger wrote that PG&E's mitigation site contains Menzies' wallflower and beach layia.

e. Jess Barger wrote that their Project Manager and interns have been and will be pulling grass in PG&E's mitigation area.

f. FOD's Restoration Plan prohibits root pulling within the ten foot around individual rosettes of any size Wallflower. (Attachment 23B)
Six more violations of their CDP.

28. Tamara Gedik, a coastal commission planner, sat on the FOD's board of directors, when the initial CDP application was drafted and submitted. Tamera was still on the board in 2010 and was aware the 2008 Restoration Plan required an update. (Attachment 24)

29. Trevor Estlow, the Humboldt County planner in charge processing FOD's original CDP application was a FOD board member in 2010 and was aware the 2008 Restoration Plan required an update. (Attachment 24)

30. In 2010 Emily was still the Restoration Manager and was aware the Restoration Plan required an update. (Restoration Reports submitted to the BOD in 2008, 2009, 2010, 2011, 2012, 2014) (Attachments 25A&B) She was on FOD staff in 2007. (Attachment 25C)

31. If FOD has violated their CDP and caused damage to the dunes or wetlands they must be required to mitigate the damage as would any other violator.

Humboldt County Planning Department Problems

A. On February 20, 2007, Trevor Estlow, Senior Planner Humboldt County Community Development, Planning Division, signed the FOTD Initial Study and Draft Negative Declaration (ND) Coastal Development Permit and Conditional Use Permit for CDP-06-49 /CUP-06-14 / LLA-06-08 / SP-06-71. The sponsor contact person was Carol Vander Meer. (Executive Director, FOD) (Attachment 26)

B. On September, 25, 2008 Kirk Girard, Director of Community Development Services sent Friends of the Dunes Coastal Development

Permit Modification, Conditional Use Permit Modification, and Notice of Merger.: 6-049M/CUP-06-14M/NOM-08-01 to the Humboldt Planning Commission. Trevor Estlow was the Senior Planner working this application. (Attachment 27)

C. On August 6, 2009, The Planning Commission approved Friends of the Dunes Coastal Development Permit Modification, Conditional Use Permit Modification, Special permit Modification & Extension.: CDP-06-049MMX/CUP-06-14MMX//SP-06-71M. Trevor Estlow was the Senior Planner working this application. (Attachment 28)

THE FOLLOWING WERE DEFICIENCIES IN EACH OF THE CDP LISTED ABOVE.

D. Planning did not require FOD to submit documentation showing the location of wetlands.

E. The FOD restoration project itself is not a Principal Permitted nor Conditionally permitted activity listed in HBAP, Natural Resources (NR). (Attachment 29)

F. Planning did not require wetland setbacks nor was the authority for not imposing the Humboldt County Zoning Regulations setbacks cited. (Attachment 29.1)

G. FOD's property was zoned Natural Resources with a Combining zone for Beach and Dune Area (NR/B). Planning omitted this zone in Section 9: Land Use and Planning in the Initial Study. (Attachments 3&30)

H. Planning did not require FOD to submit a Wetlands Delineation & Environmentally Sensitive Habitat Area Survey.

I. Planning did not require FOD to monitor and report the effects their dune habit (plant) restoration activities had on the dune system itself.

J. Planning did not require FOD to list the, "Other rare and endangered plants on their property."

(1) Pink sand-verbena.

- (2) Humboldt Bay owl's clover.
- (3) Point Reyes bird's-beak.
- (4) dark-eyed gilia.
- (5) American glehnia.
- (6) western sand spurrey.
- (7) sea-watch.

K. Each of these plants is in the California Rare Plant Rank and meet the definitions of California Endangered Species Act of the California Department of Fish and Game Code, and are eligible for state listing. Impact to these species or their habitat must be analyzed during preparation of environmental documents relating to CEQA. (Attachments 5.1, 6C&D)

L. These species or their habitat were not analyzed during preparation of environmental documents relating to CEQA.

M. A, B & C alone, and certainly in combination, calls into question the validity of each above.

N. I am submitting E through L individually and collectively, for each individual CDP issued, as Coastal Act violations.

O. The failure of the planning department to require appropriate supporting documents/studies/maps/etc. from FOD nor to prepare them internally themselves appears to me to be at least nonfeasance or possibly misfeasance.

P. I own APN 400-041-019-000 which is bounded on its east side by a continuation of the same wetland on FOD's property. It is zoned HBAP and Beach and Dune Area. In order to be granted CDP-06-72 it was necessary to submit, with the application, a Wetland Delineation Survey. A 100 foot buffer zone from the wetlands was delineated and required to be fenced. (Attachments 31A, B&C)

Q. My property has a small population of dark-eyed gilia. In order to be granted CDP-06-72 it was necessary to submit, with the application, an Environmentally Sensitive Habitat Area (ESHA) Survey. A 100 foot buffer zone from the gilia was delineated and required to be fenced. (Attachments 31A-C)

THE FOLLOWING APPLY TO CDP-06-49MMXM BELOW

1XM. On September 28, 2018, Director Ford sent Friends of the Dunes a letter: Subject: Review for Conformance with Conditions - Case Numbers CDP-06-49/CUP-06-14; CDP-06-49M/CUP-06-14M, and CDP-06-49MMX/CUP-06-14MMX. (Attachments 32A-D)

2XM. On October 2, 2018, Director Ford sent FOD a letter: Subject: Review for Conformance with Conditions-Case Number CDP-06-49MMX/CUP-06-14MMX. (Attachments 33A-E)

3XM. Director Ford and Senior Planner Steve Werner have, over the years been made aware of citizens concerns about Friends of the Dunes restoration activities. (FOD Minutes 11/2009, 6/2013, 4/2018, 5/2018) Uri Driscoll, Daniel Edrich Larry Henderson and Allison Jackson. (Attachments 34A&B, 35, 36A&B, 37A&B, 38A&B, 39A&B, 40&41)

4XM. On October 2, 2018, I hand delivered a multi page package to the Humboldt Planning Department of inclusion for the October 4, 2018, Humboldt County Planning Commission hearing to consider granting Friends of the Dunes a Coastal Development Permit Modification and Conditional use Permit Modification CDP-06-049MMXM. (Attachment 42)

5XM. Steve Werner, Supervising Planner sent the Staff Report and supporting documents to John H. Ford, Director of Planning and Building Department for his approval. Director Ford then submitted them to the Planning Commission with a recommendation to approve the CDP. (Attachment 43)

6XM. The Staff Report did not contain the subjects listed in 1-3XM nor E through L above.

7XM. The October 4 hearing was contentious. Many residents had strong objections to granting the CDP. Some were concerned about the degradation of the dunes that has occurred since FOD began restoration activities. Others, including myself, did not agree that an Addendum to the original Negative Declaration was appropriate.

8XM. A video of the October 4, 2018, Planning Commissioner's Meeting is available on the County's website. I suggest you hear the proponents and residents testimony but more importantly hear for yourself the reaction of the Commissioners to the testimony. When the commissioners say that if any other entity had acted as FOD had they would have been upstairs. Upstairs refers to the Humboldt County Superior Court. I viewed the session at:
http://humboldt.granicus.com/MediaPlayer.php?view_id=5&clip_id=1259.
The Friends of the Dunes portion begins at the 2.23.45.

9XM. Please note that Director Ford did not tell the Planning Commission Board about the subjects listed in 1-3XM nor E through L above. (pg. 10 of 24 & 11 of 24)

10XM. The commission voted to table the issue to a future date.

11XM. The planning department improperly vetted Friends of the Dunes CDP-06-49MMXM (BARR) application.

12XM. Each item in 6XM, 9XM alone, and certainly in combination, calls into question the validity of CDP-06-49MMXM.

XM13. I have attached to this violation package copies of my correspondence to the planning department and Planning Commission. In several instances I copied material from one letter and pasted it in another. In order to save you time I marked the items I believe need to be investigated by your staff.

XM14. Uri Driscoll's, Daniel Edrich's, Larry Henderson's, and Allison Jackson's communications also expose other problem areas in the planning department that your staff should investigate.

XM15. The failure of the planning department to require appropriate supporting documents/studies/maps/etc. from FOD nor to prepare them internally appears to me to be at least nonfeasance or possibly misfeasance.

XM16. I am submitting each item in 6XM & 9XM individually and collectively as Coastal Act violations.

**DIRECTOR FORD'S LETTER DATED SEPTEMBER 28, 2018 TO
FRIENDS OF THE DUNES AND THEIR RESPONSE**

1CON. Corrective actions required in the last paragraph of section 1 of Ford's letter reads, "Copies of species-specific monitoring and presence/ absences surveys, pre- and post-restoration photo plots, photo-monitoring plots and annual reports shall be transmitted to the Planning Division in accordance with the schedule set forth in the 2008 Restoration Plan." Letter dated September 28, 2018, Review for Conformance... (Attachment 32A-D)

Director Ford directed the FOD to follow the 2008 Restoration Plan which expired eight years ago. The requirement to update the Restoration Plan in 2010 is prescribed in the same document he is citing. (Attachment 44)

2CON. The second paragraph in section 2 reads, "There are mapped wetlands as well as sensitive plant species located on the NR portion of the properties. These areas are to be avoided during all beach and dune restoration work, Map showing Invasive species in Bachofer and Watson parcels in addition to the FOD and Stamps parcels (dated received August 5, 2008) show that mapped wetland areas per NWI wetland layer are avoided." (Attachment 9B)

Anyone reading that statement could conclude that FOD's restoration activities have avoided wetlands. The NWI wetlands are not identified on the map. The Wallflowers, Yellow bush lupin, European beach grasses, Iceplant and Layia are all outside green shaded areas. Additionally, the Bachofer and Watson properties were not mapped on the ground until 2009 (Attachment 45) **However and more importantly, this map does not depict any of the areas FOD has conducted restoration activities.**

3CON. Also from Section 2, "Ten measures were identified to mitigate and or minimize adverse effects to endangered plant populations (Humboldt Bay wallflower and Beach layia). [Staff Report pg. 13]."

Director Ford cites from the Restoration and Signing Plans at the Humboldt Bay Coastal Education Center and Reserve. (Stamped Received FEB 02 2007) (Attachment 46A-C)

Director Ford should have known the Restoration and Signing Plans document was superseded ten years ago by the 2008 Restoration Plan, which itself expired ten years ago and has not been replaced.

4CON. From the Deficiencies Noted section of the same letter:

A. Finding: A period existed when the Restoration Manager position was unfilled. During this time period proper oversight for the required mitigation measures in or adjacent to endangered plant populations could not be documented.

B. Corrective action: A Restoration Manager with the knowledge and experience to identify and protect endangered plant populations from harm must be present to carry out the mitigations specified in the plan summary.

C. Finding: Mobilization of dunes by removal of stabilizing European beachgrass from foredune areas can lead to the translation of sand into

adjacent wetland areas. This would be contrary to the permit restriction that no activities are to be conducted in mapped wetlands as identified by vegetation typing,

D. Corrective action: Use the principles of adaptive management to achieve the objectives of the project (i.e., restoring native dune plant communities) while minimizing sand translation into wetland features present within the property and maintaining the stability of dune forms in areas adjacent to existing development. In the foredune areas this would include the practice of removal of European beachgrass in a checker board pattern.

Director Ford failed to require FOD or a designated third party to:

- 1. Determine if any damage had occurred during the period a Restoration Manager was not present.**
- 2. Report the results of their findings for possible mitigation.**
- 3. Require FOD or a designated third party to:**
 - a. Determine if any damage had occurred to the wetlands because activities were conducted in the wetlands and/or translation of sand into the wetlands had occurred because of activities conducted near the wetlands.**
 - b. Report the results of their findings for possible mitigation.**
- 4. Director Ford failed to require FOD to include in every Annual Restoration Report a product, similar to products highlighting areas restored during the previous year, showing the total area that has ever undergone restoration activities.**

DIRECTOR FORD'S LETTER DATED OCTOBER 16, 2018 TO FRIENDS OF THE DUNES AND THEIR RESPONSE

5CON. The Species Monitoring Section of the expired 2008 Restoration plan reads, "Endangered species population monitoring was conducted in the spring of 2008 for Humboldt Bay wallflower populations by the FOD Restoration Manager using methods described in Appendix IV. Monitoring of wallflowers will occur every 3 years. Beach layia will be monitored to determine presence or absence prior to restoration and documented with collected GPS data. Followup monitoring will occur 3 years after project Implementation. Results from endangered plant species monitoring will be shared with local dune managers (USFWS, BLM, Manila Community Services District) as well as the Dunes Coop."

FOD's response: • Species-specific monitoring - A schedule for reporting species-specific monitoring to the Department was not included in the 2008 Restoration Plan. FOD acknowledges that the monitoring procedures described in the 2008 Restoration Plan for endangered plant species were goals for the organization but not requirements of the Endangered Species Act. Going forward, FOD will help to facilitate shared monitoring conducted by the U.S. Fish and Wildlife Service, as required under the Endangered Species Act. The results of that monitoring will be submitted to the Department with the Annual Restoration Update during years it occurs on our property (see below).

6CON. FOD'S RESPONSE IS UNACCEPTABLE. THEIR PLAN'S REQUIREMENT TO MONITOR IS DECLARATIVE. MENTIONING ENDANGERED SPECIES ACT WAS MEANINGLESS. THEIR PERMIT REQUIRES THEM TO FOLLOW FOD'S PLAN REQUIREMENTS.

7CON FOD's response to the Annual Reports section of Ford's required corrective actions reads, "All past annual restoration reports will be sent to the Department. Going forward, FOD will submit a separate Annual Restoration Update to the Department by March every year. This update will include a summary of work accomplished (number of acres, volunteer time, etc.), photos, and a map of where restoration occurred."

1.a THE ANNUAL RESTORATION REPORTS SUBMITTED TO THE DEPARTMENT DO NOT SATISFY THE REQUIREMENTS OF THEIR EXPIRED 2008 RESTORATION PLAN.

1.b DIRECTOR FORD MUST REMIND FOD THAT FUTURE REPORTS MUST ADDRESS ALL REQUIRED SUBJECT AREAS.

2. DIRECTOR FORD MUST REQUIRE FOD TO INCLUDE, IN THEIR ANNUAL REPORT, THE DUNES' RESPONSE TO THEIR RESTORATION ACTIVITIES.

3. DIRECTOR FORD MUST REQUIRE FOD TO INCLUDE, IN THEIR ANNUAL REPORT, THE WETLANDS' RESPONSE TO THEIR RESTORATION ACTIVITIES.

4. THE NEW ANNUAL RESTORATION REPORT IS AMBIGUOUS. DIRECTOR FORD MUST SPECIFY WHAT THE REPORT MUST COVER.

8CON. FOD's response to the Restoration Section of Fords required corrective actions reads, "Restoration Manager - FOD will immediately hire or contract a qualified Restoration Manager to ensure proper oversight of the required mitigations for endangered plant populations as stated in the Restoration Plan, if and when that position becomes vacant."

1. FOD's Restoration Plan requires FOD have a Restoration Manager and assigns nine specific duties to that manager. The Restoration Manager is critical to the success of FOD's restoration efforts. One person must be responsible for the proper execution of the Restoration Plan and it is imperative that the duties of the Restoration Manager not become fragmented.

2a. DIRECTOR FORD MUST INFORM FOD THEY MAY ONLY HAVE ONE RESTORATION MANAGER.

2b. DIRECTOR FORD MUST INFORM FOD THAT THEIR RESTORATION MANAGER MUST PERSONALLY PERFORM THOSE DUTIES SPECIFIED IN THE RESTORATION PLAN.

3a. FOD'S RESPONSE ONLY REFERS TO ENDANGERED PLANT SPECIES.

3b. DIRECTOR FORD MUST INFORM FOD OF THEIR REQUIREMENT TO PROTECT PLANTS LISTED IN THE CALIFORNIA RARE PLANT RANK.

3c. DIRECTOR FORD MUST INFORM FOD THEY ARE REQUIRED TO AVOID AND PROTECT THE WETLANDS.

3d. DIRECTOR FORD MUST HOLD FOD ACCOUNTABLE FOR: 6 (1 of 23)(Failure to protect) 15, 16, 17, 22.b(2)&(3), 23.c, 27.A-F.

4. DIRECTOR FORD MUST HOLD FOD ACCOUNTABLE FOR FAILURE TO UPDATE THEIR 2008 RESTORATION PLAN.

5. Their careful wording of their response suggests they have a restoration manager who does not have the qualifications required for that position.

6.a DIRECTOR FORD MUST IMMEDIATELY DETERMINE IF FOD'S CURRENT RESTORATION MANAGER IS QUALIFIED TO HOLD THAT POSITION.

6.b IF THE RESTORATION MANAGER IS NOT QUALIFIED FOD'S RESTORATION PERMITS MUST BE IMMEDIATELY SUSPENDED.

DIRECTOR FORD'S LETTERS TO FRIENDS OF THE DUNES AND THEIR RESPONSE

CONCERNS WITH FOD'S RESPONSE:

9CON. Letter dated October 1, 2018, Review for Conformance...
(Attachments 33A-E)

a. Grass Piles: Corrective action: Grass piles must be burned or removed from the site and disposed of at an appropriate waste disposal site. This work must be overseen by a qualified restoration manager.

b. FOD's response: Removal of grass piles - FOD will use a combination of burning and removal to complete the disposal, all overseen by an appropriately qualified restoration manager. As burn days are restrictive due to numerous factors (wind, temperature, etc.), and it has proven challenging to complete burning so as not to adversely affect air quality of adjacent neighbors, we request an additional two burn seasons to complete this action.

1. FOD has had four years to burn the piles.

A. DIRECTOR FORD FAILED TO GIVE FOD A DATE CERTAIN TO COMPLETE THE ACTION.

B. DIRECTOR FORD FAILED TO REQUIRE WRITTEN CERTIFICATION, SIGNED BY THE RESTORATION MANAGER WHEN REMOVAL WAS COMPLETED.

2. DIRECTOR FORD FAILED TO REQUIRE REMOVAL OF THE OLD STANDING GRASS PILES ON ALL OF FOD'S RESTORATION SITES.

3. DIRECTOR FORD MUST IMMEDIATELY REQUIRE 1 & 2 ABOVE.

c. FOD'S Response: The definition of "Restoration Manager" and how FOD will ensure that there is appropriate knowledge to oversee restoration. FOD acknowledges that the use of the title "Restoration Manager" in the 2008 plan was misleading and overly restrictive. This term could be used to describe a number of FOD staff (Stewardship Director, Volunteer Restoration Coordinator, Programs Coordinator, Programs Manager) who may possess the skills and knowledge to oversee restoration activities in environmentally sensitive habitats.

1. FOD's response is unacceptable. FOD's Restoration Plan requires FOD have a (singular) Restoration Manager and assigns nine specific duties to that manager. The Restoration Manager is critical to the success of FOD's restoration efforts. One person must be responsible for the proper execution of the Restoration Plan. It is imperative the duties of the Restoration Manager not become fragmented.

A. DIRECTOR FORD FAILED TO INFORM FOD THEY MAY ONLY HAVE ONE RESTORATION MANAGER.

B. DIRECTOR FORD FAILED TO INFORM FOD MANAGER IS TO PERSONALLY PERFORM THOSE DUTIES SPECIFIED IN THE RESTORATION PLAN.

C. DIRECTOR FORD MUST IMMEDIATELY REQUIRE A & B ABOVE.

10CON. From FOD's October 16, 2018, response, "FOD is in the process of drafting an updated Restoration Plan that will address the following:"

FOD's 2008 Restoration Plan fulfilled their permits requirement to adopt a formal Restoration Plan. FOD was not required to specify how or when the plan would be amended or updated.

FOD chose every word in the 2008 Restoration Plan. When they wrote, "This restoration plan will launch activities at the Humboldt Coastal Nature Center (HCNC) starting in 2008 and guide those activities until 2010, upon which time this plan will be reviewed and updated." It became a permit requirement.

There are two distinct parts in that paragraph. The first specifically addresses restoration activities, the second deals with updating the Restoration Plan.

The restoration activities were to be guided by the 2008 plan until the first day of 2010. The second part says after the first day of 2010 the results of restoration activities conducted between 2008 and 2009 were to be reviewed and the 2008 plan would be updated as necessary.

1. FOD has been in the process of updating their 2008 Restoration Plan for ten years. ALL RESTORATION ACTIVITIES CONDUCTED AFTER 2009 ARE IN VIOLATION OF THEIR PERMIT.

2.a DIRECTOR FORD FAILED TO SUSPEND FOD'S RESTORATION PERMITS WHEN THE 2008 RESTORATION PLAN WAS NOT UPDATED IN 2010.

2.b THE UPDATED PLAN MUST STATE THAT UPDATES TO FOD'S RESTORATION PLAN REQUIRES THE APPROVAL OF THE DIRECTOR OF THE HUMBOLDT COUNTY PLANNING DEPARTMENT.

3. DIRECTOR FORD MUST NOT RESTORE FOD'S PERMITS UNTIL:

a. DIRECTOR FORD CERTIFIES FOD'S UPDATED RESTORATION PLAN.

b. FOD SUBMITS A CURRENT, CERTIFIED, WETLANDS DELINEATION & ENVIRONMENTALLY SENSITIVE HABITAT AREA SURVEY THAT DELINEATES BUFFER ZONES AND INCLUDES PLANTS ON FOD'S PROPERTY LISTED IN THE STATE RARE AND ENDANGERED PLANT LIST.

c. FOD SUBMITS A LICENSED COASTAL ENGINEER'S REPORT OF FOD'S ADHERENCE TO ITS 2008 RESTORATION PLAN, THE CONSEQUENCES OF NON-CONFORMING RESTORATION ACTIVITIES, THE DUNES' RESPONSE TO NON-CONFORMING ACTIVITIES AND RESTORATION/MITIGATION RECOMMENDATIONS.

4. WHERE AS:

A. FOD WAS AWARE THERE WERE OTHER RARE AND ENDANGERED PLANTS ON THEIR PROPERTY.

- B.** FOD DID NOT INCLUDE A LIST OF THESE PLANTS WITH THEIR PERMIT APPLICATION.
- C.** FOD'S CDP FOTD REPORT DATED 3/13/2007 PAGE 5 STATES, "BASED ON ON-SITE INSPECTION ...".
- D.** THE REPORT DOES NOT SPECIFY WHAT THE INSPECTION ENTAILED. I.E. RARE AND ENDANGERED SPECIES.
- E.** THE REPORT SAYS PLANNING DIVISION REFERENCES SOURCES WERE REVIEWED.
- F.** PLANNING WAS AWARE THERE WERE FEDERAL AND STATE LISTED RARE AND ENDANGERED SPECIES IN THE AREA.
- G.** DURING THIS TIME PERIOD PLANNING WAS PROCESSING CDP APPLICATIONS FOR PROPERTIES NEAR FOD'S.
- H.** PLANNING WAS REQUIRING THOSE APPLICANTS TO SUBMIT A WETLANDS DELINEATION & ENVIRONMENTALLY SENSITIVE HABIT AREA (ESHA) SURVEY.
- I.** PLANNING DID NOT REQUIRE FOD TO SUBMIT A WETLANDS DELINEATION & ENVIRONMENTALLY SENSITIVE HABIT AREA (ESHA) SURVEY.
- J.** BECAUSE FOD FAILED TO REPORT THE STATE LISTED RARE AND ENDANGERED SPECIES ON THEIR PROPERTY.
- K.** BECAUSE PLANNING FAILED TO PERFORM DUE DILIGENCE REGARDING THE PROTECTION OF STATE LISTED RARE AND ENDANGERED SPECIES.
- L.** THEREFOR FOD'S ORIGINAL NEGATIVE DECLARATION INVALID.

***M.* THE MONITORING AND REPORTING PART OF EACH OF FOD'S CDP'S MUST REMAIN ACTIVE.**

***N.* THE RESTORATION PART OF THEIR PERMIT MUST BE SUSPENDED IMMEDIATELY.**