



# SIERRA CLUB

## SANTA LUCIA

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November 9, 2017

San Luis Obispo County Air Pollution Control District  
Hearing Board Members and Alternates  
c/o Alyssa Roslan, Clerk of the Hearing Board  
3433 Roberto Court  
San Luis Obispo, Ca 93401

Re: Case 17-01: Petition for Abatement Order

Member of the Board,

These comments are submitted on behalf of the Santa Lucia Chapter of the Sierra Club, representing our 3,000 members in San Luis Obispo County, in the matter of the petition for an abatement order at the ODSVRA.

In our review of the documents in the record, the Special Master's comments should be evaluated in light of the history of this issue: The respondent adamantly contested the Rule, as it previously contested – and continues to contest – the peer-reviewed scientific studies on which it was based, and as it is now contesting the location of air quality monitors. The Notice of Violation followed five years of forbearance by the APCO, during which time respondent displayed a notable lack of cooperation in meeting its obligations under Rule 1001. The nature of Respondent's history in this matter can be seen at the present moment in its "kitchen sink" submission to your board of (at this writing) 84 exhibits, its request for a continuance from the hearing scheduled for Oct. 16, and, after its first request was granted, its second request for a continuance – offering a different set of justifications and grievances than its first – now to an unspecified future date.

We note the signal difference between the generalities of the Special Master's Mediation Report and the specificity of the APCD. This can be seen in the APCD's "Response to OHMVR 'Confidential Settlement Communication' of 8/31/17" (State Parks Exhibit 21). Where the Special Master gestures toward "poor horizontal and vertical information exchange within and between State Parks and APCD," the APCD identifies the problem, which is not insufficient communication: "OHMVR continues to utilize every imaginable delaying tactic to avoid implementing effective dust controls, including the threat of lawsuits against them; provision of only partial information on key technical issues until pressed for additional information; taking unilateral actions that disrupt and hinder the collaborative process; and conducting ongoing ex-

parte communications with APCD Board members, which continue to this day, that have sown dissention within the APCD Board and significantly affected the ability of the APCO to effectively carry out his responsibilities related to this issue.”

We speak from over a decade of experience with the ODSVRA and the multiple environmental issues pertaining thereto. While not all of the following issues have direct bearing on the issue before you, the following chronology has a direct bearing on the conduct of the respondent, your board’s evaluation of the Special Master’s mediation report and recommendation, and the likelihood that, in the absence of an abatement order, the OHMVR Division will, per the wish of the Special Master, choose to “work together cooperatively” with other agencies.

Therefore we note for the record that in the 35 years since the California Coastal Commission issued a Coastal Development Permit to State Parks for operation of the ODSVRA, the respondent has:

- failed to comply with the permit requirement to create a permanent entrance to replace the interim entry access points at Pier and Grand Avenues.
- failed to comply with the permit requirement to create a permanent vehicle staging area to replace the interim staging area.
- failed to complete a mandatory Habitat Conservation Plan to protect the federally endangered species on site.
- failed to conduct a carrying capacity study to determine how many vehicles the dunes ecosystem can withstand without incurring long-term environmental damage.
- repeatedly refused to heed the advice of scientists to implement an experimental year-round closure of the breeding area for the Pacific snowy plover to vehicle traffic.

In its Oct. 10 request for a continuance of your hearing, respondent cites the California Coastal Commission’s September 14, 2017, meeting as evidence that a significant change has occurred because “the California Coastal Commission approved a Coastal Development Permit for the Oceano Dunes 5 Year Dust Mitigation Project.” See the above history of respondent’s non-compliance on issues of concern to the Coastal Commission, despite years of urging by the Commission that the respondent take action on each of these issues. To date, the Coastal Commission has not exercised its enforcement authority at the ODSVRA. The Commission’s Sept. 14 staff report noted that “This CDP therefore authorizes the additional measures, locations, and amounts identified by APCD, but it in no way requires DPR to implement such additional measures, and the specific measures to be undertaken will be developed by DPR in conjunction with CARB and APCD.” Hence, the Coastal Commission’s Sept. 14 action is best taken as another argument for the issuance and enforcement of an order for abatement to assure future cooperation by the respondent and the success of the program.

The 22 pages of comments submitted to your board on Nov. 8 by a San Jose-based off-roader group replicate the arguments they made at the Sept. 14 Coastal Commission meeting, focused on recreational use and arguments against the use of vegetation for dune stabilization based on the feared reduction of the size of the riding area. Prior to the hearing, Commission staff concluded that “the project will not result in significant adverse impacts to public access,” and

further rebutted these arguments in detail in an addendum to CDP Application 3-12-050 (ODSVRA Dust Control), available as State Parks Exhibit 23 and at [http://www.slcleanair.org/images/cms/upload/files/23\\_20CCC\\_Staff\\_Report-Addendum\\_\(Th23b\).pdf](http://www.slcleanair.org/images/cms/upload/files/23_20CCC_Staff_Report-Addendum_(Th23b).pdf). At the Sept. 14 hearing, Commissioners pointed out to the commenters that “The issue isn’t the size of the park; the issue is compliance,” thereby dispensing with these comments. Your board should do the same.

At its Sept. 14 meeting, the Coastal Commission unanimously and in the strongest possible terms expressed frustration with the pace of respondent’s dust reduction efforts at the ODSVRA and conveyed to the respondent that the problem must be resolved without further delay.

In light of the foregoing, we urge your board to find that the operation of the ODSVRA is the cause of a public nuisance, issue an abatement order, and uphold your obligation to enforce the California Health and Safety Code and the rules of the APCD.

Thank you for the opportunity to comment on this issue,

A handwritten signature in cursive script, appearing to read "Andrew Christie".

Andrew Christie  
Chapter Director