



October 10, 2017

*Via US Mail*

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

Members:

Ms. Eileen Mackin-Getzoff – Chair  
Dr. Yarrow Nelson – Vice-Chair  
Mr. Robert Carr  
Mr. Ryan Andrews  
Mr. William Johnson

Alternates:

Mr. Paul Ready  
Dr. Thomas Richards  
Mr. James Anderson  
Mr. Rick Rittenberg

Re: Request for a Continuance of October 16, 2017 Hearing

Honorable Members of the Hearing Board,

The California Department of Parks and Recreation (CDPR), Off Highway Motor Vehicle Recreation Division (OHMVR), Oceano Dunes District, in accordance with San Luis Obispo Air Pollution Control District Rule 814, respectfully requests a continuance of the public hearing before the San Luis Obispo County Air Pollution Control District Hearing Board (Board), presently set for October 16, 2017.

CDPR offers the following additional items, which further justify our request of a continuance:

- **OHMVR and the San Luis Obispo County Air Pollution Control District (APCD/SLO APCD) are parties to a Consent Decree.** In September 2014, APCD/SLO APCD and the OHMVR signed the *First Amendment to the Agreement Set Forth in the Proposed Consent Decree Dated March 26, 2014* (Consent Decree). This Consent Decree outlined a process that OHMVR and APCD would follow to resolve conflicts and disputes involving the “implementation of this Consent Decree, Rule 1001, or any other issue related to ODSVRA [Oceano Dunes State Vehicular Recreation Area] under the APCD’s authority...” The issue before the Board concerning APCD Rule 402 is clearly covered by this Consent Decree.

The Consent Decree allows either party to invoke the recommendation of a mutually agreed upon third party (Special Master) to resolve disputes. OHMVR invoked the Special Master in the summer of 2017 to render an opinion on multiple issues, including the subject of nuisance under APCD Rule 402. Under the Consent Decree, the Special Master met with the parties over two days in September 2017 and has yet to render an opinion. The SLO APCD is obligated to abide by the Consent Decree and follow a mutually agreed-upon and legally binding process that was mutually agreed upon by both parties to resolve issues. It is premature to pursue this issue through this Board, scheduled on October 16, 2017, until the Special Master renders a decision and the parties have an opportunity to meet and confer on the Special Master recommendations.

- **Insufficient time to gather all available materials and present a comprehensive response.** There is inadequate time to review the formal petition from the Air Pollution Control Officer. This petition was available October 4, 2017, leaving only seven full working days to review its contents and prepare a legal defense prior to the October 16, 2017 hearing. This is simply inadequate time to review this complex petition and develop an adequate defense based on sound legal and scientific principles.
- **OHMVR without legal representation.** OHMVR's lead counsel from the Attorney General's Office, Mitchell Rishe, will be out of the country on October 16, 2017, which leaves OHMVR without full legal representation on the proposed hearing date. While there may be other attorneys that are capable of representing OHMVR, any new counsel would require additional time to research the complex legal and regulatory circumstances that surround the alleged nuisance. Mr. Rishe will be back in the country on October 23, 2017 and will be available to represent OHMVR with adequate time to review all pertinent materials.
- **APCD Board does not support this process.** At the September 27, 2017 APCD Board hearing, the APCD Board considered, but voted against, a motion to pursue allegations of violation of APCD rules (including Rule 402) to the Hearing Board. In deference to the APCD Board, the Board should continue the October 16, 2017 meeting until the APCD Board provides further direction to the APCD staff on issues related to Oceano Dunes SVRA.
- **5 Year Dust Mitigation Plan.** In September 2017, the California Coastal Commission approved a Coastal Development Permit for the Oceano Dunes 5 Year Dust Mitigation Project. OHMVR is actively working to proceed with the project, which the SLO APCD supported in front of the Coastal Commission.
- **Public Works Plan.** On November 30, 2017, CDPR will be holding an open public meeting to listen to the desires and concerns regarding the future of Oceano Dunes SVRA ahead of the development of a Public Works Plan for the park unit. OHMVR have presented this approach to the APCD Board with a favorable response as an attempt to develop a global solution to the issues including Air Quality mitigations.
- **SB 249.** Senate Bill 249 was passed unanimously during the 2017 Legislative session and has been signed into law by the Governor. This bill permanently reauthorized the

Highway Motor Vehicle program for the Department. In light of this, the public benefit of the program has been affirmed by the Legislature and Governor.

For the reasons outlined above, the OHMVR formally requests a continuance on this item until November 16, 2017 to allow our lead counsel to be present for the hearing and to provide a minimum of 40 working days to review the petition and prepare a response. This continuance will also provide adequate time for the parties to consider and act upon the Special Master recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read "Liz McGuirk", with a long horizontal flourish extending to the right.

Liz McGuirk  
Chief Deputy Director  
California Department of Parks and Recreation