

1 STATE OF CALIFORNIA  
2 COUNTY OF SAN LUIS OBISPO  
3 AIR POLLUTION CONTROL DISTRICT  
4 BOARD OF DIRECTORS

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8 REPORTER'S TRANSCRIPT  
9 FROM AUDIO FILE  
10 OF  
11 PORTIONS OF APCD BOARD MEETING  
12 CONDUCTED ON  
13 WEDNESDAY, NOVEMBER 16, 2011  
14

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16 Reported by: Heather L. Watson, CSR No. 13432  
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**Air Pollution Control District Director Present:**

Chairperson Bruce Gibson	Jan Marx
Karen Bright	Frank Mecham
Jim Guthrie	James R. Patterson
Roberta Fonzi	Noah Smukler
John Hamon	Paul A. Teixeira
Adam Hill	Ed Waage

**Air Pollution Control District Staff Present:**

Mr. Larry Allen, Air Pollution Control Officer  
Mr. Ray Biering, Air Pollution Control District Counsel  
Mr. Gary Willey  
Ms. Catrina M. Christensen, Clerk of the APCD Board

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2 **CHAIRPERSON GIBSON:** We come then to public comment for items not on the agenda.  
3 I do have one request to speak. And I would ask anyone who is interested in speaking on  
4 any of the items on our agenda to fill out one of the blue slips. They're in a box at the  
5 back of chambers here. And you can just deposit them in the basket at the end of the dais  
6 to my left here. That'll allow Madam Clerk to get them at her convenience.  
7 With that, for public comment items not on the agenda, Jim Sutty, please.

8 **MR. JIM SUTY:** I was going to make a video presentation but I don't know if I have time to  
9 do that.

10 **CHAIRPERSON GIBSON:** You've got three minutes on this one.

11 **MR. JIM SUTY:** The presentation I'm providing to you, it was mentioned in an article  
12 recently by Mr. Larry Allen, that the mandate of the APCD is to protect the public health.  
13 And it's basically not a choice, it's a mandate. And as a regulatory agency charged with  
14 public health protection, we are obligated to ensure those reductions occur in a timely  
15 manner.  
16 Page two is the top emitters in SLO County that are identified in 2005. In 2005, these top  
17 emitters -- the top three were dirt roads or unpaved road dust, paved roads, and  
18 construction demolition, which basically accounted for 60 percent of the particle emissions  
19 in the county.

20 So the next page is 2009 top emitters. And here we are four years later. Top emitters  
21 are still the same; dirt roads, paved roads, and construction. Unfortunately, we're not  
22 meeting our timely obligation, and we're not addressing the top concerns in particulates.  
23 Furthermore, the next page, the county roads are deteriorating, as a study was done for  
24 San Luis Obispo in 2009 that over the past four or five years, the roads continue to

1 deteriorate, which is adding to this problem.

2 And the very last slide is the County seems to be neglecting this issue. So the County has  
3 known since 2005 that dirt roads are significantly contributing to the poor health of the  
4 community, but has failed to take action. So one of the questions I want to ask for the  
5 Board today is what are the actions that you plan on taking to solve this problem, which is  
6 the number one problem in the county?

7 And lastly, it would be good to understand what the County plans to do to solve the road  
8 problems, which are also contributing to this problem. And both issues are contributing  
9 to the health and safety problems of the county. So thank you.

10 CHAIRPERSON GIBSON: Thank you, Mr. Suty. That was my only request to speak.

11 Do you have a public comment, Mr. Greening? Yes, I'm sorry. Mr. Greening. All right.  
12 Thank you.

13 **MR. ERIC GREENING:** Thank you. Good morning. I am Eric Greening. And before I  
14 get into the topic I was going to remark on, just a sort of a follow-up to Mr. Suty. Yes, dirt  
15 roads are major emitters. If we're going to be conscientious relative to our Climate Action  
16 Plan, the County General Fund is not the best source of taking care of the roads.  
17 Essentially, it represents a subsidy to the single-occupant driver, given that our main -- or  
18 general vehicle occupancy is about 1.2-something per vehicle. If the driving community is  
19 willing to raise its fuel tax or restore the Vehicle License Fee to where it should be, then the  
20 County can indeed take care of the roads without drawing from needed healthcare services  
21 and other services that it provides. And it should. It should. The roads do need to be  
22 taken care of.

23 We also need to be very careful when evaluating road-type proposals not to conflate road  
24 maintenance with roadway expansion, which often moves in under the cover of road

1 maintenance, as it did with Proposition 1B, where most of the projects are going for  
2 expansion of the roads. Those actually become a greater source of pollution. So yes, we  
3 do need to enter into a dialogue about the roads. But it needs to be within a broader  
4 context of greenhouse gas reductions.

5 The other topic I wanted to just bring up as a possible topic for a study session, the County  
6 is revising -- it's skipping a year in its Resource Management System update. And it's  
7 going to be probably revising the way it undertakes that process, given that the  
8 incorporated cities are the holes in the Swiss cheese and are part of the same airshed and  
9 are part of many of the same other problems, such as water, schools, et cetera, that are  
10 part of this RMS process. It may be that the information gathering will come to rest with  
11 the Counsel of Governments, not with the County. And obviously, the APCD will continue  
12 to be participating. We will continue to be making findings relative to air quality. But  
13 some of the circumstances may change. And I would certainly like to see the APCD be a  
14 participant, not just a passenger, in the rethinking of how this is done. And so in order to  
15 be a knowledgeable participant, probably a study session on the RMS process and how it  
16 might change should be before your board soon.

17 One other topic for a joint study session. Perhaps you should draw on people from the  
18 Health Agency, as well as APCD, for a study session on Valley Fever. We're still in an  
19 epidemic state in the hot parts of the county. And it's something that goes with the  
20 particles. Thank you.

21 **CHAIRPERSON GIBSON:** Thank you, Mr. Greening.

22 Dr. Blair, did you want to speak in public comment item --

23 And if we could then ask if there's someone else who wants to speak on public comment  
24 items not on the agenda? Seeing no one on that, we'll take Dr. Blair as our last speaker.

1 Mr. Blair...Dr. Blair?

2 **DR. BOB BLAIR:** Good morning, ladies and gentlemen. I just want to comment. I just  
3 came back from Europe. I've been there more than once. Whatever you drove to this  
4 meeting today is not in Europe. There are no Cadillacs in Europe. There are no American  
5 pickup trucks in Europe. There were no Peterbuilts in Europe. There's no anything made  
6 in the United States in Europe, except probably Fords. But the Fords that are in Europe  
7 are not gasoline, they're diesel. Eighty percent of everything in Europe is diesel. Diesel  
8 runs clean in Europe. In Europe, you run down -- walk down little streets 12 feet wide,  
9 you're part of the -- you and the automobiles are, like, merged together. You walk down  
10 these little streets. You come out in a piazza. You have to watch out for the  
11 automobiles, because you're all going like this in the same direction. There's no lines.  
12 You're just part of it. There's no fumes. You don't smell diesel fuel. No, they have  
13 clean diesel in Europe. And the technology in Europe is going in a whole different  
14 direction than it's going in the United States. That's why our cars don't sell over there. If  
15 you go to Europe and count American cars -- this time we were over there close to two  
16 weeks. I counted 12. And I think one of those was a diesel Jeep. The car that I want to  
17 buy, I can't buy in the United States because this agency has ruled diesel fuel should  
18 somehow be bad for your health. If you go tonight and take your car, put it in the garage,  
19 it's gasoline, and try to commit suicide, in the morning you will die. But if you put a diesel  
20 car and stay all night with it, you'll come out in the morning with perhaps a headache. But  
21 you won't die, because it doesn't kill you. Okay? We need to take a new look at what's  
22 going on in this world and change things so that the American business can get back into  
23 the business of building automobiles that the rest of the world wants. We're number four  
24 or five. This is the world's leader. They're building fusion cars and fuel cell cars in

1 Europe. And they sell diesel hybrids in Europe that you can't buy here that get 45, 50, 60  
2 miles per gallon. Fuel over there also costs \$9.85 a galloon. Diesel fuel is \$8.40. This is  
3 the only country in the world where diesel fuel costs more than gasoline. And it has to do  
4 with refining processes and the restrictions put on our American refineries. We need to  
5 do something where everything else -- you know, we're in the toilet. Italy's in the toilet  
6 too, but their roads are better than ours.

7 Thank you very much.

8 **CHAIRPERSON GIBSON:** And their food's pretty good too. Thank you, Dr. Blair. I  
9 appreciate your comments.

10 And we will close public comment items not on the agenda and move to our APCO's report.

11 (Ended transcription on CD at 00:11:25.)

12 (Further proceedings held but not transcribed.)

13 //

14 (Previous proceedings held but not transcribed.)

15 (Started transcription on CD at 00:14:40.)

16 **CHAIRPERSON GIBSON:** Thank you sir, any questions for Mr. Allen? Seeing none, we'll  
17 ask District Counsel.

18 Do you have anything to report, sir?

19 **COUNSEL RAY BIERING:** I do, Mr. Chair. Very briefly, you may recall, the Board may  
20 recall, that I was directed some months ago to join in an amicus brief on a matter that was  
21 filed by Southern California Gas Company against the South Coast Air Quality Management  
22 District. And interestingly, the case involved a rule that requires that Southern California  
23 gas meets certain monitoring requirements. It's somewhat analogous to the rule that we  
24 have on our agenda later on. In any event, the Court of Appeal very recently ruled in favor

1 of the South Coast Air Quality Management District in a published decision. So if anyone  
2 would like a copy of that decision, I would be glad to have my office scan it and email it to  
3 you.

4 **CHAIRPERSON GIBSON:** All right. Thank you. Questions for Mr. Biering? Seeing  
5 none, thank you, sir.

6 (Ended transcription on CD at 00:15:32.)

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8 (Started transcription on CD at 00:15:32.)

9 **CHAIRPERSON GIBSON:** And we will move on to our hearing item today. As we get lined  
10 up to do that, let me ask again, if you are interested in speaking on this item, would you  
11 please fill out a blue form located in the back of the room, bring it to the dais. I would  
12 very much like to know how many of those forms -- how many speakers we have so we can  
13 do time management appropriately. So I would ask now that if you intend to speak, that  
14 you bring that forward.

15 Second, I have discussed with representatives from the State Park system their interest in  
16 testifying in the public comment period. They do have a presentation they would like to  
17 make. They will get ten minutes. And they've asked to go at the end of public comment.  
18 So we will open it to Mr. Jenkins, Mr. Roth, any other representatives of State Parks, at the  
19 end.

20 With that if you would, I'm going to call a name. Come to one of the lecturns and a  
21 standby person get ready at the other so we can keep this moving. At this point at three  
22 minutes apiece, we have a bit over an hour of public comment. And we certainly want to  
23 give you your time.

24 Conversely, if you don't think you need three minutes, you won't offend us if you keep your



1 comments to a lesser amount of time. So with that -- well, that's our public comment  
2 period. I guess we probably should have a staff report before we get to public comment.  
3 That sort of tradition is --

4 (Simultaneously speaking.)

5 **MR. ALLEN:** Thank you, Mr. Chair, (unintelligible) the Board. We have --

6 **CHAIRPERSON GIBSON:** Cut to the chase. Excuse me.

7 **MR. ALLEN:** There'll be two presentations this morning, one from myself and then one from  
8 Gary Willey on the rule itself. I wanted to provide a little bit of background on how we get  
9 to where we're at today. And I also Dr. Borenstein, *I think, was going to be here. If she's*  
10 *not, I can speak for her. But I know she wanted to make some comments.*

11 **CHAIRPERSON GIBSON:** We'll provide a place for her. And actually, if Ms. Arlin-Genet  
12 out in the lobby might contact Dr. Borenstein's office, we'll see if we can...

13 **MR. ALLEN:** Okay. So what I want to do was provide some background to your board on  
14 just all the work that staff has done to bring us to this point in time. And it really starts  
15 with air monitoring on the Mesa. We have been doing that for over 20 years. Actually, if  
16 you look at a -- this map shows all of the different monitoring sites for particulate matter  
17 that we have had on the Mesa starting in 1975 down at the CSD location in Nipomo. We  
18 measured there for about 20 years, and then wound up moving that site over to the  
19 Nipomo Regional Park as a better site for our monitoring site. We've also had several  
20 single-purpose monitors put up. The first long-term monitor we put up was at Mesa2,  
21 which is just downwind of the refinery. And that was actually operated by the refinery  
22 since 1991. You can see we've had a number of other stations out there, as well. So  
23 we've been looking at this issue on the Mesa for quite some time.

24 And we see significantly more exceedances of the State PM10 standard than elsewhere in

1 the county. The PM10 standard is 50 micrograms per cubic meter. And on the Mesa  
2 alone, we see -- at least at our CDF and at our Mesa2 site, we see over 60 exceedances per  
3 year there. The PM standard is rarely exceeded elsewhere in the county.

4 In addition to that, we see significantly higher peak values, hourly peak values, than  
5 elsewhere in the county. And we didn't really realize how the particulate matter was  
6 occurring up there until we actually put instruments in place that could measure on an  
7 hourly basis. Traditionally, it's been a 24-hour sample pulled through a particulate filter  
8 that you preweigh, it runs for 24 hours pulling air through it with a size-selective head, then  
9 you weigh it after that. And that is the concentration compared to the amount of air that  
10 flowed through it. So it's in micrograms per cubic meter. So all we would get was this  
11 24-hour mass. Now that we have continuous samplers out there that can give us hourly  
12 values, we see significantly high hourly concentrations during the active period of the days  
13 that we don't see elsewhere.

14 So here is this kind of a chart that shows you the difference between -- Mesa2 is the orange  
15 line there. And the Nipomo Regional Park is the green line. The white line is San Luis  
16 Obispo. And then Morro Bay is that kind of tan line at the bottom.

17 We've only been operating the station at CDF -- the continuous station at CDF -- for -- since  
18 2010. So we only have a short period of data. But you can see that its the percentage of  
19 days that we violate the State particulate matter standard on the Mesa up there is  
20 significantly more than any place else in the county.

21 And just for comparison, here is a comparison of maximum hourly values. We picked the  
22 spring of 2011 for comparison. We didn't want to show you a whole year's worth of data.  
23 It wouldn't fit on the screen. But these are the times when we see the peaks on the Mesa.  
24 And you can see that we don't get anything close to those hourly concentrations at

1 our -- up in Atascadero, another continuous monitoring site that we have up there. In  
2 terms of health risk, Dr. Borenstein had wanted to be here --

3 **CHAIRPERSON GIBSON:** She is.

4 **UNIDENTIFIED SPEAKER:DIRECTOR HILL:** She's here.

5 **MR. ALLEN:** Oh, Penny. Would you like to speak to this line?

6 **DR. PENNY BORENSTEIN:** Good morning. Penny Borenstein, Health Officer for the  
7 County.

8 So I don't think it comes as any surprise to anyone that we know that there are health  
9 consequences of exposure to particulate matter. But I just wanted to reiterate what  
10 those consequences are.

11 And they largely come in the form of respiratory consequences, but there are also cardiac  
12 issues. And they affect all ages, but not equally. So the youngest children, infants, even  
13 fetuses, are most highly affected. Elderly and also people with preexisting conditions of a  
14 respiratory or a cardiovascular nature. And in particular respiratory problems, what you  
15 see are exacerbation of asthma, bronchitis, and various infections, including pneumonia.

16 Also, not something that would be obvious because of breathing in something, but there is  
17 a definite increase in heart attacks associated with PM10 and PM2.5 as well, as well as  
18 other cardiac conditions. And some emerging information that is coming up now in the  
19 medical literature is that, in fact, newborns may have problems with lung development by  
20 virtue of exposure. We know that there are increased hospitalizations, emergency room  
21 visits, school absenteeism. All the things that you would expect from these kinds of  
22 medical conditions. And in fact, premature death is associated with exposure to  
23 particulate matter. And then too, there's also healthcare economic impacts.

24 I'll go just one step further, because folks ask me in our department all the time, well, why

1 can't we make these associations for the people who are exposed to this material in this  
2 community that we're talking about? And it has to do with the nature of epidemiologic  
3 study, that you have to have a certain sample size to be able to show increased rates  
4 compared to another community that doesn't have the same exposure. So basically, what  
5 in a community of this size you cannot do -- well, you can if you had a few million dollars,  
6 perhaps, to do a study at the level of a population of 5- or 10- or 15,000 people. The  
7 results that I'm showing you here come from places where that kind of study with millions  
8 of population, urban areas primarily, that has been done.  
9 And you can definitely make the association that it doesn't matter where you live, there is a  
10 cause-and-effect known and replete in the literature that these conditions exist as a direct  
11 consequence of exposure to particulate matter. We can't make the person-to-person  
12 cause-and-effect. But certainly, we know that if a population, however large or small, is  
13 exposed to excessive levels of particulate matter, then we would expect that the  
14 population, some members of it, would have these consequences.  
15 So I just wanted to add that perspective, as well. I'm available for any questions.

16 **MR. ALLEN:** Thank you, Dr. Borenstein.

17 **CHAIRPERSON GIBSON:** Let's go with a couple quick questions. Dr. Borenstein, can you  
18 stay for the staff report --

19 **DR. PENNY BORENSTEIN:** Yeah.

20 **CHAIRPERSON GIBSON:** -- another 15 or 20 minutes? There is a specific question for  
21 Dr. Borenstein right now, Mr. Waage?

22 **DIRECTOR WAAGE:** Yes, Mr. Chair.

23 We hadn't -- you sent us an email. I did reply to your email. I was concerned about the  
24 areas that are not downwind of the riding area, for example. You're telling us there's

1 health risks. In fact, the staff up here in the dais, we have a presentation. Look at the  
2 last page and you have -- I sent the email with the very same picture here where I showed  
3 that Cypress Ridge is not downwind of the riding area.

4 And the question is, what do we do for the folks that are not downwind of the area that  
5 would be considered for regulation?

6 **CHAIRPERSON GIBSON:** Okay. Mr. Waage, Dr. Borenstein is here to speak to the health  
7 risks of PM10. We'll get into the question of what the geographic distribution of PM10 is.  
8 But I think Dr. Borenstein is here to explain why PM10 is a problem, where it occurs. It is  
9 up to our investigation to find. But again, unless you have something specific out of that  
10 particular question...

11 **DR. PENNY BORENSTEIN:** No. Yeah, my point is that where we know there are areas of  
12 high levels of particulate matter, we can expect some of these health consequences in the  
13 population.

14 **MR. ALLEN:** I think I can add to that briefly in that the community monitoring project that  
15 your board approved will actually give us a very good understanding. We're going to  
16 saturate the Mesa with monitoring to look at where the highs and lows are and try to  
17 determine the exact impact of the plume.

18 **CHAIRPERSON GIBSON:** Okay. Thank you. Any other specific questions to  
19 Dr. Borenstein?

20 And if you could stay for just a bit as we get to the end of the staff report, we'll do  
21 questions.

22 Again, the colleagues, the actual green buttons for requests are not keyed into the screen  
23 here. So if you just want to raise your hand, I'll keep my head swivelling.

24 And ask Mr. Allen to continue.

1 **MR. ALLEN:** Okay. Thank you.

2 Thank you, Dr. Borenstein.

3 So just to give you an idea of the amount of work that has been done to date, we, in looking

4 at all of the exceedances that we have seen over the years, we have actually performed

5 several -- looked at data analyses to look at trends from the different monitoring sites that

6 we had. We couldn't really get a lot out of that. And we decided that we needed to do a

7 fairly comprehensive study to try to determine what is the source of the high PM levels that

8 we're measuring. Which we started measuring once we put monitors up on the Mesa

9 itself, in the areas that -- where Mesa2 is now located. And so in 2004/2005, we did

10 basically some saturation monitoring up on the Mesa with PM10 and PM2.5 samplers that

11 ran for an entire year. And we did a number of interesting things in looking at the data.

12 We did a lot of speciation to try to determine what the chemical composition of the

13 particulate matter was that we were measuring. And we found that it was

14 predominate -- on the days when we were exceeding the standards, it was predominately

15 silica, which is sand, essentially. And we saw exceedances of both State and Federal

16 health standards. The State standard in particular was exceeded 28 percent of the sample

17 days during that study. And the primary cause was very definitely identified as northwest

18 wind events that would carry sand particles from the area of the Oceano Dunes up to the

19 Mesa. We had some directional sampling that was done at that time that actually only

20 turned on when we got winds above a certain speed. And so -- and they were all pointing

21 right at the dunes.

22 And so the study was not designed to assess the impact of off-road vehicles on the dunes.

23 We didn't know that that was an issue. We didn't know if the dunes were an issue. We

24 looked at dirt roads. We looked at agriculture. We looked at paved roads. We looked

1 at every possible source up there. But we weren't looking to try to determine the impact  
2 of off-road vehicles on the dunes. And we were not able to tell the board that -- whether  
3 or not they were contributing factors.

4 And so our Board gave us direction in 2007 to conduct additional research on that. And  
5 that's where the Phase 2 Study came into play. And the primary goals of that study, as  
6 defined by our Board, were to determine if, in fact, off-road vehicles were contributing to  
7 the high particulate matter levels that we were seeing on the Mesa, and were there any  
8 other sources that might be contributing, as well, like the coke piles, petroleum coke piles  
9 at the refinery, nearby agricultural activities, dirt roads, or any other possible sources.

10 And so the study was designed and implemented to meet those goals. And we talked to a  
11 lot of folks, got a lot of advice about who the best experts were in this field. And we  
12 settled on the UC Davis Delta Group who we -- actually, at the time, we were working with  
13 State Parks hand and glove on the design of the study. And we jointly selected the Delta  
14 Davis Group as internationally-recognized experts in particulate studies. And they helped  
15 us to design and implement the study. We also had the assistance of the Great Basin  
16 Unified Air Pollution Control Districts. They are well-recognized experts in the United  
17 States in dune and open source emissions evaluation and mitigation. They have the  
18 largest particulate matter problem in the United States with the dry Owens Lake bed and  
19 the Keeler Dunes out there. They've been very successful in reducing -- determining the  
20 cause and reducing those emissions.

21 Our agency was involved, our staff, our recognized experts in air monitoring and data  
22 analysis. University of Texas was involved in soils and particle sizing. And then the State  
23 Parks was fully involved in the study design and actually responsible for selecting the  
24 control site.

1 So this was quite a comprehensive study. It was actually three independent studies rolled  
2 into one to try and measure the differences between the riding and non-riding areas. The  
3 Great Basin Air District was responsible for performing the sand flux measurements, which  
4 would look at differences in sand movement between the riding area and non-riding areas.  
5 The Delta Group was responsible for looking at particle size, composition, and also doing  
6 mass concentration measurements downwind of the riding area and the non-riding area.  
7 And then our agency was responsible for the ambient air monitoring sampling for PM10  
8 and PM2.5 downwind of the riding area and non-riding area.  
9 It was an extensive study. There was about 2 million data points generated through that.  
10 The three different groups independently analyzed their own data. And all the data was  
11 validated through calibrations of all the equipment that were being used. And very rigid  
12 quality assurance, quality control checks on the data. We spent an unbelievable number  
13 of hours looking at the data and how it would all fit together.  
14 And what we found was that all three studies shows very consistent findings. The Great  
15 Basin analysis showed that wind moves sand in the riding area easier than in the control  
16 area. The Delta Group drum samplers showed that fine particulate matter levels  
17 downwind from the riding area were higher than the control area. And our monitoring  
18 showed the same result, with higher particulate matter downwind from the riding area  
19 than the non-riding area.  
20 We were able to rule out emissions from the refinery, from agriculture, from roads, from all  
21 other possibilities, as being any type of significant contributor of emissions on the high PM  
22 days where we have northwest winds. There's no doubt the dirt roads contribute on  
23 other days when winds are blowing from other directions. But we don't see violations of  
24 the standards when that is happening. When we see violations of the standards, it's when



1 winds are moving across the dunes.

2 So this is just one of the charts that was prepared by -- this is the sand flux analysis  
3 performed by Great Basin showing that the green line down there is the control area. And  
4 these red lines are the riding area, showing that there is a -- quite a large difference in the  
5 amount of sand movement in those two areas.

6 In terms of -- these pink charts up above were the results of drum samples. That was an  
7 intensive episode day analysis that was done on several different episode days. This is  
8 just a period of three days here showing that the control site area here at Oso Flaco is well  
9 below all of the sites that were up on the Mesa downwind of the riding area. And these  
10 other sites, Grover Beach, Pier Avenue Site, Silver Spur, and this bluff site is actually the  
11 agriculture site, show much lower concentrations. You see the same thing in the APCD  
12 monitoring where the CDF concentrations are over two times higher than what we see at  
13 Oso during episode events.

14 So the conclusion that we came to from that is that off-road vehicle activity is, indeed,  
15 contributing factor, a major contradicting factor, to the high particulate concentrations  
16 we've seen on the Mesa. We had unanimous support of that in the findings by our peer  
17 reviewers. And the weight of evidence, I think, when you look at all three of those pieces  
18 put together, provides a lot of confidence in the findings.

19 So the Board accepted those study findings in March 2010 and directed us to work with  
20 State Parks collaboratively on solutions and concurrently begin development of a rule. So  
21 we have worked very collaboratively with State Parks over the last year and a half on just  
22 analyzing this issue and how to approach it in terms of reducing emissions out there. We  
23 collaborated with them on the DRI pilot project study to look at the effectiveness of  
24 different strategies for reducing emissions out in a coastal dune environment. And that

1 study, as well as numerous other research studies in that same field, show that there are a  
2 variety of available strategies that can reduce emissions from the riding area.  
3 So we have spent nearly a decade researching this issue, countless staff hours, a lot of  
4 money, to try to determine the source and what the solution to this might be. We have  
5 spent an incredible amount of time reviewing and evaluating all of the comments that have  
6 been raised related to the rule and the Phase 2 Study. If you, hopefully, you've had a  
7 chance to go through the materials in your packet. We have answered all those  
8 questions. And I think it's helped to reaffirm in our minds the validity of the findings of  
9 the Phase 2 Study. The rule itself is designed to reduce violations of the Health Standards  
10 to natural background levels. And if we can achieve that, we would expect about a  
11 75 percent reduction in exceedances of the PM10 standard on the Mesa based on the  
12 Phase 2 data.

13 And so with that, I was going to have Gary walk through the rule itself. And then we could  
14 go to questions or go to --

15 **CHAIRPERSON GIBSON:** Yes.

16 **MR. ALLEN:** -- questions, however you want to do it.

17 **CHAIRPERSON GIBSON:** Unless there are pressing questions for Mr. Allen at this point.  
18 Mr. Waage?

19 **DIRECTOR WAAGE:** Thank you, Mr. Chairman.  
20 You mentioned there were three independent studies; is that correct?

21 **MR. ALLEN:** Correct.

22 **DIRECTOR WAAGE:** And the Great Basin Group, did they measure their own wind speeds?

23 **MR. ALLEN:** No. Those wind speeds were measured by us.

24 **DIRECTOR WAAGE:** So is that independent if you depend upon your wind speeds? Since

1 you showed the graph with wind speed and so forth, those wind speeds were measured at  
2 CDF, not by -- for example, the Desert Research Institute measured their own wind speeds.  
3 That was truly an independent study. But Great Basin Group, in fact, used your wind  
4 speeds. So they did not measure their own wind speeds.

5 **MR. ALLEN:** Well, I think that's fairly typical in a lot of studies. They did the analysis of  
6 all the data. They designed where the sand collectors ought to be placed out there. And  
7 they evaluated all of the data. So the only thing that they didn't have was the wind speed  
8 data that was provided by our station, so...

9 **DIRECTOR WAAGE:** At the CDF site?

10 **MR. ALLEN:** Correct.

11 **DIRECTOR WAAGE:** Thank you.

12 **CHAIRPERSON GIBSON:** Mr. Willey?

13 **MR. WILLEY:** Okay. Good morning, members of the board, Mr. Chair.  
14 Can I get that full slide up? Thank you.

15 I'm here today to tell you about the changes that we've made from the concept rule that  
16 we brought to you back in September for direction and comment.

17 **CLERK:** Gary, will you direct the microphone a little bit towards you?

18 **MR. WILLEY:** Is that better?

19 **CLERK:** Thank you.

20 **MR. WILLEY:** Okay. I hope I get this thing right here. All right.

21 A little bit about the process. As Larry stated before, it started with the PM studies. And  
22 from there, we moved into an MOA process with State Parks. From that, that process  
23 basically ran to the DRI study. We went into a different MOA process. I don't know what  
24 you have in there.

1 **MR. ALLEN:** Hang on one second Gary. I shouldn't have done that. All right.

2 **MR. WILLEY:** A brief intermission. So we went through that MOA process, which  
3 basically got the DRI pilot studies off at that point. We went to reviewing other dust  
4 regulations to see if there was anything out there that was similar to ours. But we found  
5 that we do have a very unique environment, and there really wasn't anything out there to  
6 base our rule upon.

7 We did extensive research for performance standards. At first, we were looking at trying  
8 to measure sand movement and use that as a proxy. But that was determined not to be a  
9 very direct way of -- and actually using a measurement, direct measurement, would be  
10 best.

11 **CHAIRPERSON GIBSON:** Again, (unintelligible), if we could have full volume on your voice.  
12 We are having a little trouble with some folks hearing in the far back.

13 I should also mention that if you are having trouble in general hearing, we do have some  
14 assisted hearing devices that I do believe our clerk might be able to provide.

15 **MR. WILLEY:** Okay. Thank you. I guess I need to lean over into this microphone a little  
16 bit.

17 **CHAIRPERSON GIBSON:** Yes. Speak like you're talking to the end of the dais there.

18 **MR. WILLEY:** All right. Sorry about that.

19 So after we conducted that performance standard research with Dr. Richard Countess  
20 *[phonetic]*, we developed the regulation based upon that performance standard. It's  
21 really a best management approach -- practices approach.

22 We held a public workshop on September 7th and had over 70 people attend. I think it  
23 was invaluable to find comments of the public and how they felt about the regulation.

24 We then made some changes and we brought it to the Board. Since then, we've done

1 press releases of website postings. Like I mentioned before, we had the rule -- the  
2 concept presentation to the Board on the 28th.

3 Now, the goal of the rule is to reduce the SVRA contribution to a natural background level.  
4 And that's really what we were trying to do through this whole process. The rule is based  
5 on a 24-hour PM10 standard and natural background levels, the riding area and non-riding  
6 area monitoring. And the key to it is the Particulate Matter Reduction Plan. It really is  
7 the best management approach. It doesn't specify a single project. There are literally  
8 countless ways you could reduce emissions from an operation like this, by entering into  
9 surface roughness, a variety of different methods. It's impossible to determine what  
10 exactly a specific remedy might be. But the pilot studies did show that there are, indeed,  
11 ways to reduce those.

12 That also includes a Pier Avenue track-out plan. That's one thing that we did notice in  
13 this -- that the Pier Avenue was definitely receiving track-out from the SVRA on the road.  
14 So we included that as specific.

15 Compliance with the rule is based on PM10 monitoring difference between the riding and  
16 non-riding areas. And that's really -- that's where the natural background component is.  
17 The changes from the September version, these changes are based upon Board direction  
18 for (unintelligible) monitoring. So we came up with a requirement for a temporary  
19 baseline monitoring plan. And that monitoring is really how the control site and SVRA  
20 sites are going to be chosen. The district intends to work extensively with State Parks on  
21 development of that monitoring plan and on a site selection.

22 It includes a February 28th, 2013, date to begin monitoring. And that's the date that we  
23 hope to start collecting data to get an idea of what the baseline levels were before the  
24 PMRP projects would be implemented.

1 Board also gave us direction to come back with a draft PMRP due to the District so that we  
2 can get a requirement that -- before they bring it to try to obtain their permits through the  
3 other agencies, that the District has seen what the projects are.

4 The next series of changes involve some changes that were done as the result of the  
5 comment period that we had. We added a -- I would like to say that the changes do not  
6 materially change the rule or the effectiveness or the nature of the rule. So from what we  
7 published in the notice, there really is no significant changes to the regulation. The  
8 concepts are still the same.

9 The exceptional events clause, that's where if you have a fire or a tornado -- not that we're  
10 going to have one -- that we would not hold State Parks accountable to a violation in that.  
11 The District never intended to do that. And when Blue Skate [*Phonetic*] made a comment  
12 we thought, well, yeah, that's a very good idea to put that in there, just make it clear.

13 We've also added a no penalties for failure to meet interim time limits caused by regulatory  
14 permitting delays. And those are the time limits to get the PMRP adopted. Those times.  
15 The final compliance date of May 31st, 2015, when the perform measure would kick in, that  
16 wouldn't change. But the interim limits, we would take out our ability to levy fines on  
17 those.

18 We've also changed the performance measure from a 10 microgram trigger between the  
19 control site and the SVRA to a 20 percent of the controls of the -- 20 percent of the value  
20 from the SVRA monitor. That -- we looked at that. And that was a comment made by  
21 State Parks, that we did some analysis and it -- we could take that comment without  
22 changing the effectiveness of the regulation. So it made sense to change that, as well.

23 Okay. On the performance measure, it utilizes a monitor downwind of the SVRA and a  
24 control site monitor in a similar downwind -- a similar non-riding area downwind of it.

1 Compliance is based upon monitoring the differences between the riding area and  
2 non-riding area. So when the 24-hour PM standard is exceeded by 5 micrograms per  
3 meter cubed, or the level is 55 micrograms per meter cubed, the riding area monitor  
4 cannot be greater than 20 percent above the non-riding area monitor. And that's where  
5 the violation would be triggered. And again, these do not apply until May 2015, after the  
6 PMRP projects are well established.

7 Some examples of the performance measure in action, say the vehicle activity monitor was  
8 54, the control site monitor was 30. Even though there's a significant Delta of 44 percent,  
9 it's not a violation because the vehicle activity monitored doesn't exceed 55 micrograms  
10 meter cubed.

11 In the next example, you have a 56 microgram reading, a 46 on the control site. There's a  
12 10 microgram difference of 18 percent. There's still no violation. In this case, it does  
13 exceed 55, but the Delta is less than 20 percent.

14 In the third example, we use 100 micrograms reading on the dunes monitor, and the  
15 control site monitor reads 75. We've got a 25 microgram difference. That's 25 percent.  
16 It's a violation because the difference is greater than 20 percent and the value is above 55.

17 And the third and final one, looking at them, say this is just a really high wind day. We get  
18 150 microgram reading at the vehicle activity area monitor, 120 at the control site. The  
19 difference is 30 micrograms, which is 20 percent. And it's not a violation, because the  
20 difference is not greater than 20 percent. So it's important to note that it has to be  
21 greater than 20 percent, and not 20 percent.

22 Compliance milestones. The compliance milestones in red are new ones that we've  
23 changed since our concept rule. Like I said before, we added the monitoring site selection  
24 plan due date, coming up this February. I drafted the PMRP coming up at the end of May.

1 And to begin monitoring in February 28th of 2013, or roughly 16 months from now.  
2 Whenever we adopt rules, we have to do a cost effectiveness analysis of the regulation.  
3 In this case, the Health and Safety Code is set up for procedures to look at Basin-wide  
4 pollutants. So it may be combustion emissions from boilers that you would go out, you  
5 would look at all of them and compare different categories of different sizes. It's not  
6 developed for a single-source issue. So when we talk about -- and people argue about the  
7 cost effectiveness of a control measure. In this case, we don't have a defined measure.  
8 And it would be up to the operator the SVRA to determine which projects are most  
9 cost-effective.  
10 Like I said before, the specific control measures are not required. The PMRP allows the  
11 operator to select the most cost-effective choices that are feasible. But we do have some  
12 known costs, and we are -- we are required to identify those.  
13 And we do know that monitoring stations cost approximately \$69,000 to set up, assuming  
14 we have electricity nearby, and that the annual cost of monitoring is approximately \$15,500  
15 per year. We are also aware that these plans take money to develop and that \$2- to  
16 \$400,000 would be a reasonable amount to assume, although they could be lower, they  
17 could be higher. If State Parks does it entirely in-house, their out-of-pocket cost would be  
18 substantially lower. However, if they hired it out, it could be higher.  
19 That PMRP project implementation, those costs are unknown and could be significant.  
20 But in this case, there are no other -- in the case of the cost effectiveness, there are no  
21 other measures to compare it to. We can't control dust in the North County and get an  
22 effect down in the Nipomo Mesa in front of the dunes. That's what the studies have  
23 shown.  
24 On the -- our CEQA side, it is our position that it is not a project under CEQA, although it is a



1 project. If it were a project, it would be categorically exempt under CEQA, because it  
2 includes requirements for the protection of the environment. When we went through the  
3 rule, that's how we developed it. And that's exactly why we included no fines during the  
4 timeframe of PMRP development, knowing that some projects may have to go through  
5 CEQA, depending on what the applicant chooses.

6 We also did a compliance with environmental analysis required by the California Resource  
7 Code. And we demonstrated that in the staff report.

8 During our comments, all issues raised in the comments that we've received prior to today  
9 have been addressed during the staff report. We made changes based upon those  
10 requirements. The Air Resources Board reviewed the previous version that we did with  
11 those before the minor changes were made. And they had no comment on those  
12 versions. And we don't expect, since the nature of those changes wouldn't lead us to  
13 believe that they would have any comments on those, as well. And they would also have  
14 the ability -- afterwards, we send in our final rule -- which happens all the time. Boards  
15 take actions on rules, they modify them before -- between the comment period with the Air  
16 Resources Board. The Air Resources Board takes it back in and they make another  
17 comment finding. We anticipate that they will have no comments on the minor changes  
18 that we've made. This is common.

19 Another thing, the Health and Safety Code requires that the Board make specific findings.  
20 And we've had numerous comments on these. And we believe all these findings can be  
21 made.

22 The necessity. It's necessary to promote attainment of the PM10 standard in the Nipomo  
23 Mesa. There's no other source that's been identified there that contributes to those  
24 violations on the high event days. We have clear authority in the Health and Safety Code

1 to adopt the regulation. The rule language was crafted to be as easily understood as  
2 easily possible. All rules, the nature of them, make them harder to understand than some  
3 concepts, because you have the legal reasoning involved. But this rule has been crafted to  
4 be as easily understood as possible.

5 Consistency. We reviewed other air quality regulations and requirements. And it's  
6 consistent with those. It doesn't duplicate any other rule or any other regulation. And  
7 by reference, we're implementing requirements by the Health and Safety Code. That's the  
8 basis for this attainment of the standard.

9 And in concluding, I would recommend the Board make the findings and adopt Rule 1.

10 And I would be happy to answer any questions.

11 **CHAIRPERSON GIBSON:** All right. Start on my left.

12 Mr. Patterson?

13 **DIRECTOR PATTERSON:** Yes. Thank you, Mr. Chair.

14 Mr. Willey, a couple of questions. You mentioned the monitoring site, the equipment  
15 itself, costs about \$69,000 per site, and that annual monitoring is another \$15,000. How  
16 many monitoring sites do you propose having? And will that be an expense that is  
17 incurred by the Air Pollution Control District?

18 **MR. WILLEY:** There's a minimum of two sites that are required. That's the SVRA site and  
19 the control site. However, the rule is written to allow multiple sites, should the operator  
20 want to have that. There may be an advantage for State Parks to have multiple control  
21 sites so they can choose the highest reading on that particular day.

22 **DIRECTOR PATTERSON:** So you wouldn't average the readings, necessarily?

23 **MR. WILLEY:** No. No, we wouldn't average the readings. And as far as the cost incurred,  
24 those would be State Parks, not the Air District.

1 **DIRECTOR PATTERSON:** Okay. How long does a typical monitoring station function  
2 before it has to be replaced? Are they good for 10 years, 20 years?

3 **MR. WILLEY:** I would have to defer that to Larry on that.

4 **MR. ALLEN:** Sorry, I was writing.

5 (Simultaneous speaking.)

6 **DIRECTOR PATTERSON:** How long is the equipment in a monitoring site good for? In  
7 other words, how often might they have to be replaced?

8 **MR. ALLEN:** Well, they're pretty industrial strength equipment. But, you know, I  
9 would -- they require regular maintenance. What happens is a pump will burn out or  
10 something like that, you have to replace that. There's various little parts that will wear  
11 out. It's kind of like a car. You can keep a piece of equipment going for 20 years. But  
12 there might be new technology that comes about in the meantime that provides better  
13 measurement accuracy, and then you decide to change. So we've had some of our ozone  
14 analyzers for a couple of decades.

15 **DIRECTOR PATTERSON:** I see. Okay. Thank you.

16 **CHAIRPERSON GIBSON:** Mr. Hill?

17 **DIRECTOR HILL:** Thank you, Mr. Chair.

18 Mr. Willey, a couple of questions. One of which, when you said you were developing the  
19 rule you took a "best management standards approach." I wonder if you can elaborate a  
20 little on that, just to be clear?

21 **MR. WILLEY:** Well, the rule itself doesn't require any specific control technologies. It's up  
22 to the operator to determine which management practices can meet the requirements.  
23 So it's really like I showed you in the previous hearing, what Great Basin did for the Owens  
24 Lake bed is just really, really general. Just, you know, bring us something back that can fix

1 the problem. So in the case, we're not specifying that you plant a row of trees or that you  
2 vegetate this specific areas. It's up State Parks to determine what measures could be  
3 effectively used.

4 **MR. ALLEN:** By "best management," really, it'll be reviewing what's out there in the  
5 literature, what's worked in other areas, and trying to make a determination as to how  
6 applicable those will be here and the scope and extent of those. So it's going to be looking  
7 at what has worked the best elsewhere.

8 **DIRECTOR HILL:** Which would include some of the pilot projects?

9 **MR. WILLEY:** Presumably, yes.

10 **DIRECTOR HILL:** And another question if I could, Gary. Going back to some of the slight  
11 changes, including one that we did with State Parks, can you elaborate on the 20 percent  
12 above on the microns that we agreed with State Parks to make that alteration in the rule?  
13 Just to make it clear to the folks here.

14 **MR. WILLEY:** Okay. When State Parks proposed that level, we did an analysis to  
15 determine just, you know, how many of the expected violations that we'd see dropped off.  
16 And really, it would be only a couple out of -- what was it, the number?

17 **MR. ALLEN:** I don't know. Out of maybe almost 40 exceedances that we looked at out  
18 there, it might cut out one or two of those based on that. And it provides, I think -- it  
19 provides more flexibility in that standard, and would really result in the same level of  
20 mitigation out there. I don't think it would reduce the effectiveness -- overall  
21 effectiveness of the rule. But it provides for -- I think as you get higher winds that lead to  
22 higher concentrations, it provides a better buffer for the variability -- the natural variability  
23 that you'll see under those circumstances. So we thought it was a reasonable suggestion.

24 **MR. WILLEY:** Yeah. And it -- in looking at it, we wouldn't expect any changes to the PMRP

1 based upon -- based upon that difference of 10 versus 20. They're going to come up with  
2 the same plans, that same mitigation procedures.

3 **CHAIRPERSON GIBSON:** Okay. Thank you.

4 Mr. Smukler to Mr. Hamon to Mr. Waage.

5 **DIRECTOR SMUKLER:** Thank you. I just would like you to describe what the process  
6 would be for updating or amending the rule going forward into the future.

7 **MR. WILLEY:** Yeah. As far as a process of updating or amending the rule, obviously, this is  
8 going to be something that the Board is very close to and that we'll be doing updates on  
9 and working with State Parks. Should there be any need to change any of the milestones  
10 or final compliance dates or any part of the rule, we would bring it back to the Board and  
11 propose those changes.

12 In addition, should an interim measure or thing be involved with a rule where State Parks  
13 finds itself out of compliance beyond their control, they can always go to our hearing  
14 board, which is set up in law to take care of things that are beyond somebody's control as  
15 far as compliance with a rule.

16 **DIRECTOR SMUKLER:** And if you could elaborate just a bit more on how fines would be  
17 applied, what you've done with other areas that the APC District's involved with, and what  
18 you would potentially see happening here in the case that there were exceedances and the  
19 fine concept was brought to the table.

20 **MR. WILLEY:** Well, I'd let Larry handle that one, as far as the fines go.

21 **MR. ALLEN:** Well, there's been a lot of comment about the fines, I think. And in my  
22 mind, it's -- it's kind of a red herring out there. We -- we work very closely with all  
23 facilities that are under regulation by us. And when they violate one of our regulations,  
24 we look at the cause of the violation, whether or not there was negligence involved, was it

1 just an oops sort of thing. We typically provide warnings that look, you're in violation of  
2 the rule, you may not have known that, but here's what you're going to need to do. Or  
3 sometimes, we'll issue a notice to comply, which there's no fine associated with that. It's  
4 like a fix-it ticket on your car. But if we see a violation that is significant and substantial,  
5 then we look at well, what's the potential fix for this? And in most cases, we will look at  
6 what the Health and Safety Code says. We look at what the violation history of the  
7 operator is out there. Have they had similar violations in the past? If not, the fine will be  
8 pretty small. If they've had similar violations for the same thing in the past, then it ramps  
9 up a little bit. And so -- and then we go through a mutual settlement process, usually,  
10 where we send a letter and say, well, based on what we've seen, here's the penalty that we  
11 would propose and if you want to talk about it, come see us and we'll sit down, if you can  
12 offer us any mitigating circumstances we're not aware of, we'll talk about it and we'll adjust  
13 that.

14 So in this specific case, it's a little bit different of a creature because of the way it's -- the  
15 source of emissions and what they will need to do to comply. And so we're going to have  
16 to use -- like Gary mentioned, we put into the regulation itself that our intent that we  
17 would not require penalties on any violations that occur that are the result of  
18 circumstances beyond the control of the operator. And so -- and we do that with all of  
19 our folks. But that seemed an issue, so we wanted to make it clear in that language.  
20 But in terms of the penalties, it's usually based on a whole series of findings that you make.  
21 And you just -- you look at every special case. I'm not sure if that answers your question,  
22 but...

23 **DIRECTOR SMUKLER:** That was speaking to it.

24 And at what point would the Board be involved with that discussion, considering the

1 profile of this? Would you anticipate that the Board would actually be consulted? I  
2 know we have the appeals committee or board. But if you could describe that so the  
3 public's aware of how the Board would actually be able to consider these fines and that  
4 process.

5 **MR. ALLEN:** Well, the Board doesn't typically get involved in that specific aspect of it.  
6 That is left to the Air Pollution Control District and me taking your direction as your Air  
7 Pollution Control Officer and understanding that if you've got constituent complaints out  
8 there coming in saying, hey, the APCD's being heavy-handed, you're going to give us  
9 direction to revise our practices. We haven't seen that. But Ray might want to address  
10 how the Health and Safety Code sets that up.

11 **COUNSEL RAY BIERING:** The State statute draws a clear line between the Air Pollution  
12 Control Officer and the Board itself. So in all districts, the board has no role when it  
13 comes to enforcement or fines. The hearing board which you've created has some  
14 authority if it's in the context of a variance under a permit and the staff is contending that  
15 you violated the permit, the applicant would have an opportunity to go to an independent  
16 hearing board that we've set up. But this board doesn't get involved in the fines.

17 **CHAIRPERSON GIBSON:** Thank you.  
18 Mr. Hamon, and then Mr. Waage.

19 **DIRECTOR HAMON:** Thank you, Mr. Chair.  
20 Actually, Mr. Smukler asked a great question I was going to talk about, was with regard to  
21 the fines.

22 And I do remember, Gary, you saying something at the workshop there in Grover Beach  
23 about the actual figure. And that's what I was actually wanting to get into a little bit.  
24 And that's still the same, as far as the schedule that you had planned?

1 **MR. WILLEY:** The schedule's in the Health and Safety Code, the fee schedule --

2 (Simultaneously speaking.).

3 **MR. WILLEY:** -- is State law. Yeah.

4 **DIRECTOR HAMON:** All right.

5 **MR. WILLEY:** So it also -- it's a per diem occurrence.

6 **UNIDENTIFIED SPEAKER:** Right.

7 **MR. WILLEY:** So, I mean, if you look at \$1,000 per day and they hit 40 exceedances a year,  
8 that's \$40,000. It's a --

9 **MR. ALLEN:** Maximum.

10 **MR. WILLEY:** Maximum.

11 **MR. ALLEN:** We have significant discretion under that, on the fines. I mean,  
12 our -- typically, our -- in most cases, our -- the penalties that we impose are ten percent or  
13 less than the maximum. Sometimes far less than ten percent than the maximum penalty.  
14 So I mean, it just all depends.

15 **DIRECTOR HAMON:** It sounds like there's a lot of significant staff time when an  
16 occurrence occurs that we have to get into disseminating exactly what's going to happen  
17 with that particular --

18 **MR. ALLEN:** Absolutely. There's a full investigation by our staff that looks at all the  
19 factors involved in the violation of the rule. And again, the history of the operator in the  
20 past and so forth.

21 In this particular case, like I said, it's unusual, because we have a situation where they're  
22 going to propose an Emission Reduction Plan, and we're not going to have a great  
23 understanding at the beginning of how well that's going to work.

24 **DIRECTOR HAMON:** Right.



1 **MR. ALLEN:** So there's going to be a lot of leeway and latitude as we move through and  
2 we look at how it progresses to see how effective are the measures being right now and are  
3 we seeing, you know, good reductions in some areas with some measures and not in  
4 others? And we're going to have a year and a half to two years, I think, to be evaluating  
5 that with the monitoring and working with State Parks and saying, well, it looks like some of  
6 this is coming along, some of it might not be. But once we get to the final end, there's still  
7 going to be that subjectivity in looking at, well, maybe we need to implement more, or  
8 maybe we need to allow -- if they do vegetation, maybe it needs a little more time to grow.  
9 It's going to be -- we're going to have to sit down and work with them. And we intend to  
10 to do that --

11 **DIRECTOR HAMON:** Right.

12 **MR. ALLEN:** -- so --

13 **DIRECTOR HAMON:** That's exactly what I hope this rule does for all of us, is that it's going  
14 to address the incremental difference only --

15 **MR. ALLEN:** Absolutely. That's --

16 **DIRECTOR HAMON:** -- (unintelligible) that's happening downwind the SVRA.

17 **MR. ALLEN:** -- that is the intent, the total intent of the rule.

18 **DIRECTOR HAMON:** Very good. Thank you.

19 **CHAIRPERSON GIBSON:** Mr. Waage (unintelligible).

20 **DIRECTOR WAAGE:** Thank you, Mr. Chairman.

21 You mentioned a couple of things, Mr. Allen, about the Phase 2 Study was accepted. I  
22 believe, in fact, the minutes reflect it was received and filed, just to clarify that.

23 And with respect to the adoption of the rule, if the rule were adopted, it goes to the State  
24 and then the Federal EPA for approval; correct? Or it goes for their final adoption or

1 whatever?

2 **MR. ALLEN:** No. It does not go to EPA. It would go to ARB. But this would not be  
3 included as a Federal rule. Because we are not in Federal non-attainment. And so it  
4 does not have to be included in the State Implementation Plan. And we would prefer that  
5 it not be in the State Implementation Plan. We prefer to retain local control over that.  
6 So no, it would not go into the Federal plan. The Federal government would not have  
7 jurisdiction.

8 **DIRECTOR WAAGE:** How about the CARB?

9 **MR. ALLEN:** The ARB would have the same jurisdiction they have in all of our rules and  
10 regulations. They, you know, periodically look at how we're implementing our regulations  
11 and our compliance programs. But they're pretty much a hands-off sort of agency.  
12 We've never had them come in and tell us that we're not doing things appropriately.

13 **DIRECTOR WAAGE:** I have a question, then, on page ten where it talks about -- B110,  
14 where it talks about, at the very top, "When the PMRP is implemented, staff expect  
15 significant emissions reductions."

16 What's the basis for that statement, since it doesn't seem like we really know what those  
17 might be or how it might be achieved?

18 **MR. ALLEN:** Well, just based on the intent of the rule, the rule is intended to reduce  
19 emissions to natural background levels. So based on all of our studies to date, we would  
20 expect that significant reductions would occur. Because right now, all the data indicates  
21 that there's about 75 percent more violations in the downwind riding area than the other  
22 non-wind riding area.

23 **CHAIRPERSON GIBSON:** I think the short answer is in the acronym. Particulate Matter  
24 Reduction Program. That's why that program's being put into place, is to create

1 significant reductions.

2 **DIRECTOR WAAGE:** Well, then let me go to my comments. Mr. Allen, if you put my slide  
3 presentation up there, since it responds to --

4 **CHAIRPERSON GIBSON:** Okay. Let me -- I'll be happy to let you do that, Mr. Waage.

5 But if we could just get questions, and then I'll let you go ahead and make this presentation  
6 if you're going to make a PowerPoint. And then we'll go to public comment.

7 Any other questions of staff at this point?

8 Ms. Bright. Yes, you did.

9 **DIRECTOR BRIGHT:** Thank you. Now just a point of clarification. Regarding the rule  
10 revision, I was told by Director Waage, as was my counsel, that this rule was going to  
11 become a Federal rule and would become very difficult to be amended or revised. So are  
12 you saying that that is not the case, that this rule will --

13 (Simultaneously speaking.)

14 **MR. ALLEN:** That is incorrect. No, this will not be a Federal rule. This is just a local  
15 regulation.

16 **DIRECTOR BRIGHT:** So it's something that we can certainly --

17 **MR. ALLEN:** We revise it at any point in time that the Board determines. Or we  
18 determine we need to bring back revisions to the Board, it can be done, so...

19 **DIRECTOR BRIGHT:** Okay.

20 **MR. WILLEY:** I would like to add that we would have to submit that. We would have to  
21 make a specific submit to the State to send us to EPA --

22 **MR. ALLEN:** Right.

23 **MR. WILLEY:** -- for inclusion in the State Implementation Plan in order to do that.

24 **MR. ALLEN:** Right --

1 (Simultaneously speaking.)

2 **MR. ALLEN:** -- we'd have to make a request.

3 (Simultaneously speaking.)

4 **MR. WILLEY:** As a district, we don't do that.

5 **MR. ALLEN:** No.

6 **DIRECTOR BRIGHT:** I appreciate --

7 **CHAIRPERSON GIBSON:** Anything more, Ms. Bright?

8 **DIRECTOR BRIGHT:** Not at the moment. Thank you.

9 **CHAIRPERSON GIBSON:** Okay. Mr. Hill?

10 **DIRECTOR HILL:** If I could follow up on Counsel Member Bright's clarification too, because

11 I think it's important. And I was glad that Counsel Member Smukler brought this up on

12 the updating and amending. Do we --

13 Do we foresee a process as we head down this road with both the PM Reduction Plan and

14 then -- I mean, we're talking 2015 before the rule even goes into place. Do we foresee

15 any changes to the rule that might occur before? Are we looking at something -- you

16 know, sort of a literally on-the-ground changes and amendments that might come in

17 collaboration with State Parks after? How do you foresee this letter, Larry?

18 **MR. ALLEN:** Well, you know, I think that all depends on what we see out there. Right

19 now, we believe that the way the rule is structured, that it provides a fair structure for

20 State Parks to meet the requirements of the rule and still keep the operations of the park

21 going out there.

22 And we'll be looking at how well that happens throughout the course of time. If we see a

23 need to make adjustments to the rule at some point in time, we will bring it back to you.

24 Or you could be -- you know, State Parks might feel like, hey, we found out there's a part of

1 this that doesn't work. Maybe we're in disagreement with them on that. They'll come to  
2 your board and say we would like you to reopen this rule. And it would be your board's  
3 decision to do that. You have that authority and opportunity at any point in time.

4 **DIRECTOR HILL:** And as has been the practice of the Air District in working with other  
5 agencies or individuals or businesses in trying to help them to come into compliance on  
6 standards. We have -- it seems when you look at some of the past, you know, success  
7 stories -- and I do think they're success stories when we're able to help people reduce any  
8 kind of air pollution without having to face fines.

9 I mean, have we seen any -- have we had to pass any rules that we haven't made  
10 amendments to or adjustments to in practice afterwards that you can recall?

11 **MR. WILLEY:** Yeah. We've done many rules. For oil fuel tanks, for the power plant  
12 refinery. You know, things change over time --

13 **UNIDENTIFIED SPEAKER:** Right.

14 **MR. WILLEY:** -- you find new information, so you bring it back and you make modifications.  
15 And that's -- that's just part of the process.

16 **DIRECTOR HILL:** Okay. Great. That's what I need. Thank you.

17 **MR. WILLEY:** We've also eliminated rules that were no longer needed, as well, so...

18 **CHAIRPERSON GIBSON:** Thank you. Ms. Marx?

19 **DIRECTOR MARX:** I'm over here. Hi. I just had --

20 This is basically just kind of a clerical question. We were referred -- in Section D it says,  
21 "Section C.3 should not apply." But when I went up to Section C to try to find C.3 -- I think  
22 our numbering is off. Yeah. So I just would like to have people look at B117 and help  
23 me --

24 **CHAIRPERSON GIBSON:** Well --

1 **DIRECTOR MARX:** -- make sure that I know exactly what number --

2 **CHAIRPERSON GIBSON:** -- and I wonder, is that something you have a question on right

3 now? Could they look at it while we take public comment --

4 **DIRECTOR MARX:** Sure.

5 **CHAIRPERSON GIBSON:** -- and get back to you on that?

6 **DIRECTOR MARX:** Yeah --

7 **UNIDENTIFIED SPEAKER:** That's a good point. I --

8 **DIRECTOR MARX:** -- just before we would rule either way on --

9 (Simultaneously speaking.)

10 **DIRECTOR MARX:** -- on the rule --

11 **CHAIRPERSON GIBSON:** Okay.

12 **DIRECTOR MARX:** -- I think that we need to make sure that the references --

13 **CHAIRPERSON GIBSON:** Right.

14 **DIRECTOR MARX:** -- to Section C.3 actually would direct our eyes to that section of the...

15 **CHAIRPERSON GIBSON:** Okay. Thank you for that observation, Ms. Marx. And we'll

16 have staff look at that while we're doing public comment. Mr. Waage --

17 Are there any other questions for staff on the presentation with that?

18 Mr. Waage, I see what looks to be a PowerPoint presentation on some fairly technical

19 material. I wonder if I could ask you to summarize the issues here in five or six minutes?

20 Is that about what you need?

21 **DIRECTOR WAAGE:** I think I can do it in about five -- about six minutes with the

22 PowerPoint. We have it up on the dais. I think the public might like to see it on the

23 overhead.

24 **CHAIRPERSON GIBSON:** At five to six. Because we do have about 90 minutes of public

1 comment ahead of us on this.

2 We can do that? Yes.

3 **DIRECTOR WAAGE:** Well, first of all, we're just being set up here. If you go to page 137.  
4 That's under tab eight of your packet. There's the issue of wind speeds. Specifically, the  
5 question is whether or not the wind speeds measured at CDF were accurate or not. As if  
6 you've read through the PowerPoint presentation that our City Council submitted to the  
7 Board, we found -- when I looked at it, I found that the wind speeds on the dunes were  
8 70 percent higher measured at the State Park's location. And those were the very same  
9 wind speeds -- as compared to CDF -- and those were the wind speeds at that Great Basin  
10 used for their sand movement measurements. And if the wind speeds are incorrect at the  
11 CDF Fire Station, that changes some of the conclusions.

12 **CHAIRPERSON GIBSON:** Could you briefly explain how it changes the conclusions? Does  
13 this mean that --

14 **DIRECTOR WAAGE:** In fact, if the wind speeds are lower at CDF than on the dunes, that  
15 would give you a lower sand movement threshold, which changes one of the conclusions in  
16 the report.

17 **CHAIRPERSON GIBSON:** Okay. Get -- carry on. I don't -- it's your five or six minutes.  
18 I'm sorry. Go ahead and we'll discuss this after we come back from public comment.

19 **DIRECTOR WAAGE:** Okay. The wind speeds at CDF, as I showed in our presentation  
20 here, are measured behind tall trees, eucalyptus trees, and that the wind speeds on the  
21 dunes themselves are much higher by as much as 70 percent. And since the wind speeds  
22 at CDF were used by the Great Basin group, that means that those values are in error.  
23 In fact, the staff report states on page 173 at the bottom paragraph, "In hindsight, we know  
24 now that the only way to accurately measure sand flux is to measure winds at the exact

1 location that the sand flux is being measured due to ability of (unintelligible), et cetera.  
2 That seems to concede that there's some problems with the wind speeds measured that  
3 way.  
4 Also, in reply to my comments about the wind speeds -- if you could go to the first  
5 slide -- staff reported back that, well, CDF is similar to the wind speeds at the Grover Beach  
6 location. And since Grover Beach is on the ocean, pretty close to the ocean, that means  
7 that because they're similar, that the wind speeds at CDF should be okay. That, however,  
8 ignores the fact that Grover Beach is also lower wind speeds because it's behind the -- it's in  
9 the wind shadow of the Irish Hills, whereas the CDF and the State Parks are not.  
10 Go to the next slide.  
11 As I showed in the PowerPoint presentation, CDF is shielded by trees. Both will have  
12 lower wind speeds. The only wind speeds we have that are unobstructed, in fact, are at  
13 the S1 Parks location.  
14 Next slide.  
15 This has to do with the PowerPoint at the -- a slide that this Board and the public saw many  
16 times was a 25 percent increase in particulate matter looking at the highest versus lowest  
17 vehicle activity days.  
18 Next.  
19 I pointed out at our Council meeting that there were some problems with the calculation  
20 and with the assumptions. And afterwards, the District staff reported back that they  
21 stood by their corrected analysis. It's now a 34 percent difference and they do not need  
22 their control site Oso. And the control site Oso is the non-riding area versus the CDF,  
23 which is the riding area.  
24 Next slide. But if you throw out the control site and you look at 50 highest-use days



1 versus 50 lowest-use days, you have significant seasonal differences. In fact, here's what  
2 they found for particulate for Mesa2 for the way they did the study. However, at the  
3 lowest-use days, you actually had eight days of rain. None of any consequence for the  
4 highest 50 use days. Hours of sunlight was more. Warmer temperatures. It was  
5 dominated by summer versus winter. And what you're looking at is this difference, then,  
6 represents seasonal differences -- or could very well represent seasonal difference. And  
7 so, in fact, it cannot be used as a basis for that conclusion.

8 Next.

9 Let me look at the plume dispersion model. And this gets a little technical. But the issue  
10 was if you looked on some of the (unintelligible), there was an issue of what the different  
11 shapes and sizes of the two sites. Oso is much smaller, sand sheets closer to the  
12 monitoring location. And CDF has much larger sand sheets, but they're a little bit farther  
13 away. Staff then did use a program called Screen Three, which is, among other models, to  
14 try to look at the difference between the two sites. In fact, my model, I used a gas and  
15 plume dispersion model. It's the same model that the staff used. So we're basically  
16 looking at the same kinds of things. Staff said I didn't look at distance effects. In fact, it  
17 does.

18 Next slide. What I did was look at a grid and consider the contributions for the entire sand  
19 sheets measured here at the CDF Fire Station. The same thing for Oso. The point is if  
20 you look at the contributions from all of these locations minus the areas where there's  
21 vegetation, you then can get an idea of what the contribution is from the shapes and sizes  
22 of the sand sheets.

23 The problem with the Phase 2 Study, it said all of the difference between the CDF and the  
24 Oso site was due to vehicle activity. If size and shapes of the sand sheets makes a

1 difference and distance to the monitoring location, then that argument no longer holds  
2 water.

3 Next.

4 I mean, first of all, look at the difference in the wind speeds. I'm doing this because it  
5 depends very much on the wind direction. I should say wind direction. Back in 2008-9,  
6 the CDF wind tower was at seven meters. Now it's at ten meters. And it makes a  
7 difference. I looked at the wind directions for CDF and the Parks S1 in the last year. And  
8 I found about 302 degrees for CDF, which is lower than the number that was used in the  
9 study, since the wind tower has changed. S1 was 290 degrees. You can see right about  
10 here (indicating). So in fact, the wind tower on the dunes shows a lower wind direction  
11 than that on the dunes.

12 Next.

13 Okay. This is now the two plots. The red is CDF. The blue is Oso. And the question is,  
14 this is -- the point is this is what you would calculate using this gas and plume dispersion  
15 model for the relative amounts of particulate from those two areas. The control is -- Oso  
16 is the control. CDF is the riding area. If we use the S1 wind direction, this line,  
17 (indicating), and look at the red line coming across here (indicating), that's above -- it's right  
18 at this point (indicating). The Oso wind direction as determined in the Phase 2 Study was  
19 at this point (indicating). It intersects with the Oso line here (indicating). Since this value  
20 is less than this value, it says that due to size and shapes of the sand sheets and distance to  
21 the monitor, you can get a significant difference in the amount of particulate you would  
22 measure. Not just due to vehicle activity, but also due to size and shapes of sand sheets.  
23 If you look at the CDF wind direction at ten meters, which is behind trees, so it might not be  
24 representative as much as the dunes, it intersects at this point (indicating), yet the

1 difference is still here (indicating).

2 It's a little more complicated than this. But basically, the idea is -- the takeaway from here  
3 is that you can get differences in the total amount of particulate that you measure at the  
4 two locations due to size and shapes of the sand sheets and distance to the monitor --

5 **CHAIRPERSON GIBSON:** All right.

6 **DIRECTOR WAAGE:** -- contrary to what the staff said.

7 Next slide.

8 (Simultaneously speaking.)

9 **CHAIRPERSON GIBSON:** -- Mr. Waage, we're about seven, eight minutes into it at this  
10 point.

11 (Simultaneously speaking.)

12 **DIRECTOR WAAGE:** About ready to wrap it up.

13 **CHAIRPERSON GIBSON:** Well, this is actually technical information that should really be  
14 discussed --

15 (Simultaneously speaking.)

16 **UNIDENTIFIED SPEAKER:** I'm ready to wrap it up, Mr. Chairman.

17 **CHAIRPERSON GIBSON:** -- thank you. Would you, please.

18 **DIRECTOR WAAGE:** A couple more slide here.

19 The point is that I just summarized here, the model says you get about 60 percent more just  
20 due to size and shape. Therefore, we can explain the differences due to that.

21 Next.

22 The other factor is here's the fence line (indicating). In fact, the sand sheets here are  
23 closer to CDF outside the fence line than inside the fence line. The staff did not look at  
24 the possibly that the amount of sand sheets here, which contributed to the amount of

1 PM10 measured at the CDF. So the point is a significant amount, perhaps, of the  
2 particulate matter measured at CDF was coming from the non-riding area. That was not  
3 mentioned in the Phase 2 Study.

4 I looked at the amount from this location at this point using the Screen Three method that  
5 the staff used -- next slide -- and I found that there were three times as much at those two  
6 locations for riding area versus the non-riding area of 302 degrees. The point is we have  
7 substantial unknown amount of particulate coming from the non-riding area, which was  
8 not considered in the Phase 2 Study.

9 Next slide. Finally, there were some areas that are -- there's an expectation that there will  
10 be much lower particulate matter in some places, especially like Cypress Ridge. Here's  
11 Cypress Ridge, this area (indicating). This is a direction of 300 degrees, which is the  
12 dominant wind direction in the Phase 2 Study. The Cypress Ridge area is, in fact,  
13 downwind of the non-riding area, north of the riding area. This is the hiking area. I used  
14 to hike up there. There's sand sheets there. That will contribute, as well, to the  
15 particulate matter here. Very little from the riding area.

16 And I just wanted -- I think it's important as a policy matter that we look to see if we can  
17 reduce the amount of particulate from this non-riding area too.

18 Thank you, Mr. Chairman.

19 **CHAIRPERSON GIBSON:** All right. Thank you, Mr. Waage. I'm going to ask technical  
20 staff to get a copy of this and look in there and see if there's any items that require a  
21 response.

22 With that, we are ready to go, then, into a break. That's sort of what I'm hearing from the  
23 right side of the dais. I'd like to -- we have a great deal of public comment. I'd like to  
24 reconvene at 10:40, please.

1 **UNIDENTIFIED SPEAKER:** (Unintelligible.)

2 **CHAIRPERSON GIBSON:** 10:40. Ten-minute break.

3 (No audio on CD from 1:28:21 to 1:28:29)

4 **CHAIRPERSON GIBSON:** Madam Clerk?

5 **THE CLERK:** Certainly. Your microphone should be live.

6 **CHAIRPERSON GIBSON:** Thank you, Madam Clerk.

7 We will ask Directors to regain -- regain their seats.

8 Again, I have now a significant stack of requests to speak. And we are eager to hear from

9 all of you. We have, I know, a couple of people that have other business to get on to.

10 And I've been requested to put in place a process that we sometimes use at the Board of

11 Supervisors. And that is if you feel that what you have to say can be conducted in one

12 minute, we'd be happy to hear from you now. If that helps you move on with your day,

13 we would take any individuals who wanted to speak for just one minute. And we will go

14 then to folks who are wanting to speak for two minutes. And then we'll take the rest in

15 order as regards to three-minute commentation -- comments.

16 **UNIDENTIFIED SPEAKER:** (Simultaneously speaking.)

17 **CHAIRPERSON GIBSON:** Yeah. Well, we've got different rules -- different rules for that.

18 We'll get to that.

19 With that, I see Mr. Denneen at the lecturn. Sir, do you have a one-minute comment?

20 **MR. BILL DENNEEN:** One-minute comment.

21 **CHAIRPERSON GIBSON:** Thank you, sir.

22 **MR. BILL DENNEEN:** My name is Bill Denneen. I come from Nipomo. I've lived there

23 for 50 years about a mile away from the monitoring station in the park. And I feel -- well,

24 first of all, these letters -- (unintelligible) do I have to do that or --

1 **CHAIRPERSON GIBSON:** This is all included in the price, Mr. Denneen. Please.

2 **MR. BILL DENNEEN:** Thank you.

3 **UNIDENTIFIED SPEAKER:** (Unintelligible.)

4 **MR. BILL DENNEEN:** Thank you. This letter that -- well, eventually being passed  
5 around -- and there's more of them right here in this little thing here if anybody wants to  
6 read the letter. This is a letter I am not going to read here. I read it yesterday in Nipomo  
7 at Senior Nutrition. At Senior Nutrition, I said, do you want me to come to this hearing  
8 today to deal with the air you're breathing? And they unanimously said yes. So I'm here  
9 today representing the people of Nipomo. And I think we should stop promoting driving  
10 vehicles -- this is in the letter -- but I think we should stop driving vehicles as a type of  
11 recreation. We need to walk more, jog more, get out, and enjoy the natural -- and not  
12 drive vehicles. And my tax dollars and your tax dollars go to promote vehicle driving as a  
13 form of recreation.

14 **CHAIRPERSON GIBSON:** Thank you, sir. A minute five.

15 **MR. BILL DENNEEN:** And that's the end of my minute. And I want you -- I want you to  
16 read that.

17 **CHAIRPERSON GIBSON:** Okay.

18 **MR. BILL DENNEEN:** And if you want copies, they're available.

19 **CHAIRPERSON GIBSON:** Thank you, Mr. Denneen.  
20 Ma'am, if you would just give us your name.

21 **MS. KATHY EGAN:** Hi. My name is Kathy Egan, and I'm a homeowner on the Nipomo  
22 Mesa.  
23 I've attended many meetings on the Pismo Dunes dust issue. I've also been following  
24 developments in the newspaper and on the internet.

1 I support passage of the dust rule and feel there's been enough studying of this air quality  
2 issue, and any further delay is not acceptable. I resent that there are certain public figures  
3 from cities close to the Mesa who are threatening lawsuits because they are so worried  
4 about negative financial impacts to their community. I am also worried. But I am  
5 worried about my health, my family's health, and the health of all my neighbors.

6 I am not asking you to close the park to the ATV's. But I am asking you to let the APCD do  
7 their job in trying to mitigate this terrible dust pollution situation.

8 Thank you for letting me speak.

9 **CHAIRPERSON GIBSON:** Thank you, Ms. Egan.

10 Mayor Higginbotham?

11 **PISMO BEACH MAYOR SHELLY HIGGINBOTHAM:** Thank you, Mr. Chair, board members.

12 I'm Shelly Higginbotham. I'm the mayor of Pismo Beach.

13 You all received my letter and Counsel Member Waage -- or Board Member Waage's  
14 PowerPoint. I'm not going to be redundant. But I did want to comment on one item on  
15 Mr. Allen's PowerPoint. And that was the fact that he said we can expect a 75 percent  
16 reduction in PM10 based on the Phase 2 data. And my concern and question is if there  
17 are actual flaws in that data, then we're really doing nothing to address public health and  
18 PM10 emission reduction.

19 Thank you.

20 **CHAIRPERSON GIBSON:** Thank you, Ms. Higginbotham.

21 Any other one-minute commenters, please?

22 **MS. GRACE KORN:** Good morning. I'm Grace Korn. I live on the Mesa.

23 I would like to present you a scenario. If somebody on that Mesa dies from respiratory  
24 problems and it's -- they find that the particulate matter contributed to that death, you are

1 going to be sued for a lot of money, because you know it's a health hazard and you did  
2 nothing about it.

3 Thank you.

4 **CHAIRPERSON GIBSON:** Thank you, Ms. Korn.

5 Anyone else would like to speak for one minute? And those who would be interested in  
6 speaking for two minutes, if they wanted to line up to my right, that would be fine, as well.

7 **MS. GAIL APPLGATE:** I'm Gail Applegate. I live on the Mesa.

8 And I don't have any scientific or technical information. And I don't have the results from  
9 thousands of dollars in study. I just have my personal observations. And I've lived there  
10 for 11 years. And my screen -- the silt on my screens and the silt on my patio furniture has  
11 to be wiped down daily in order to be usable. And also, I notice that at certain times of  
12 the evening, about dusk, you can look and see the air particles floating in front of your  
13 hand. I don't believe it's safe to breathe air I can see.

14 Thank you.

15 **CHAIRPERSON GIBSON:** Thank you, Ms. Applegate.

16 Any other one-minute commenters? Yes. If you would, Ma'am.

17 **MS. ELIZABETH MURRAY:** I'm Elizabeth Murray. I live on the Nipomo Mesa in Trilogy.

18 I spend a lot of time outdoors there. But very often when I look out, I decide not today,  
19 the air is just visible.

20 This bill is not what I would like to see done. I would also like the activity of the ATV's to  
21 be stopped. But I urge you to vote for at least a start. So I would like to see you adopt  
22 this rule.

23 Thank you.

24 **CHAIRPERSON GIBSON:** Thank you very much, Ms. Murry.



1 Any other one-minute commenters? Sir.

2 **MR. PAUL STOLPMAN:** My name is Paul Stolpman. I'm actually Liz's neighbor. I would  
3 like to make just two points.

4 One is I would like to compliment the APCD staff on this. I'm a 30-year employee of the  
5 Environmental Protection Agency in Washington. And I think the staff here did both a  
6 very good technical job and a very good job of managing this process, which you all know is  
7 a very difficult process. So I'd like to compliment to APCD staff.

8 Secondly, I think the way this rule is structured is sound for the problem that we've got.

9 I -- as a breather of the air, I think it's too long -- you know, it's too stretched out in terms of  
10 compliance. But having said that, I would like to see the Board adopt this rule.

11 Thank you.

12 **CHAIRPERSON GIBSON:** Thank you, Mr. Stolpman.

13 Any other one-minute commenters? Seeing none, we'll move to two minutes. And we  
14 can alternate lecturns.

15 Mr. Greening, go ahead. Go ahead.

16 **MR. AUSTIN PERLAK:** I'd like to say one thing.

17 **CHAIRPERSON GIBSON:** Oh, one minute? You've got it.

18 **MR. AUSTIN PERLAK:** Yeah.

19 **CHAIRPERSON GIBSON:** Yes, sir.

20 **MR. AUSTIN PERLAK:** I would like to say that I'm a carbon-based life form. And carbon  
21 really isn't the problem. It's the other chemical pollutants that are in the air attaching to  
22 these carbon particles, carbon molecules, and then polluting our bodies. But I think  
23 people live in the desert pretty well, and there's sand everywhere. And at the same time,  
24 there's always space dust coming down from the comets, you know? Think about that.

1 Simple.

2 **CHAIRPERSON GIBSON:** Could I get your name for the record, sir?

3 **MR. AUSTIN PERLAK:** Carbon-based life form. No, Austin Perlak.

4 (Simultaneously speaking.)

5 **CHAIRPERSON GIBSON:** Austin Perlak, comma, carbon-based life form. Thank you, sir.

6 Mr. Greening.

7 **MR. ERIC GREENING:** Thank you. I'm Eric Greening, another carbon-based life form  
8 addressing a whole room full of them. And I do get two, don't I?

9 **CHAIRPERSON GIBSON:** Two.

10 **MR. ERIC GREENING:** There. Thank you. Yeah.

11 And first thing, I would like to go back to very early in the process, I thought we were  
12 discussing a county-wide Fugitive Dust Rule. And I would just like to remind everyone that  
13 in the rest of the county, we also have needs. We already have considerable quarry  
14 activity and trucks with not properly consolidated or covered loads. And we have huge  
15 numbers of quarry applications. Don't act on that now, but at least give us a timeline.  
16 But please, don't use that as an excuse for not acting to protect the breathers in the South  
17 County now.

18 The worst thing you can tell State Parks is take your time. The record with State  
19 Parks -- let's see, how late is the Habitat Conservation Plan that includes this area, the  
20 alternative access where the vehicles enter the area not splashing through tidewater Goby  
21 and Pacific Steelhead stream. That's 25 years late. So whatever you do today, be on the  
22 side of hurry it up, not on the side of take your time, with State Parks.

23 That said, even though the rule is not perfect. I'm very distrustful of the hay. And I think  
24 if you're going to include that, have some CEQA analysis relative to the transfer of

1 non-native seeds into the habitat, for example.  
2 But another concern I have is -- I think Mr. Allen made some very, very good responses  
3 throughout the staff report to questions that have been raised. There was one "no  
4 comment" that worried me. And that was -- or "comment noted." And that was in  
5 reference to a threat to sue. And basically, the statement that we can hang up  
6 enforcement of this by suing. I hope that that does not show any predisposition to  
7 not -- the Agency injuncting itself, until or unless an injunction is placed upon it; that the  
8 Agency would enforce in full faith until or unless an injunction comes from elsewhere, not  
9 to injunct itself.

10 **CHAIRPERSON GIBSON:** Thank you, Mr. Greening.

11 Ma'am, for two minutes?

12 **MS. JILL BUCKLEY:** Good evening, Mr. Chairman, members of the committee. My name  
13 is Jill Buckley, and I've lived on the Mesa for about ten years.

14 I suffer from asthma, and I seem to contract bronchitis at least once per year, and I am not  
15 a smoker.

16 I ask that you please support the APCD Fugitive Dust Rule to mitigate the health risks that  
17 are associated with riding on the dunes. It's very important to the health and welfare of  
18 those of us who live on the Mesa.

19 Although there have been statements by individuals claiming this study is flawed, there  
20 have been not been any scientific studies refuting it. The esteemed scientists who  
21 conducted the study had no interest in concluding that vehicles are causing the particulate  
22 matter from the dunes.

23 I again urge you to please support the Fugitive Dust Rule and show your concern for the  
24 health and welfare for those of us who live on the Mesa.

1 Thank you.

2 **CHAIRPERSON GIBSON:** Thank you, Ms. Buccally.

3 Two minutes, Dr. Blair.

4 **DR. BOB BLAIR:** Hi. It's Bob Blair. I live in (unintelligible) Arroyo Grande, but I kind of  
5 snuck over the border of (unintelligible) Arroyo Grande from Nipomo. I moved here 45  
6 years ago. Bill Denneen was my neighbor, been here 50 years. You look at two of us.  
7 He's 86, I'm 77. Do we look like we're suffering from asthma or any kind of air pollution or  
8 anything like that? You look at our arms. We're out in the air every day. He rides his  
9 bicycle, I ride my tractor. I'm in good shape. And I intend to stay in good shape. My  
10 house is one of the highest houses on the west side of the freeway. It gets all the air.  
11 I'm in perfect physical shape.

12 As a pharmacist for 35 years in this area, respiratory problems were never one of the bigger  
13 problems. Most of the people -- maybe this woman's an exception. But most of the  
14 people that have asthma are smokers. Most of the children that have asthma are children  
15 of smokers. A lot of them, people will come in, hold their kids puffing cigarettes before  
16 you passed the ban on cigarette smoking. I've seen it over 35 years.

17 Do not get too excited about this agency. You're going to kill -- if you kill -- they're a  
18 primary thing, I think, is to kill people on the dunes. And I don't go out on the dunes  
19 anymore, but I think people have the right do that. And you're going to have a huge  
20 economic problem in this county if the dunes disappear. A lot of businesses are going to  
21 disappear. A lot of the people that pay taxes to support your job, support his job, are  
22 going to disappear. A lot of them have already gone to Texas. Half of my business, I've  
23 moved to Nevada. And I'm working on the other half. So you people do what you want  
24 to do. But I think this is wrong way to go.

1 Thank you very much.

2 **CHAIRPERSON GIBSON:** Thank you, Dr. Blair.

3 Another two-minute comment, sir?

4 **MR. RICK SEARCY:** Rick Searcy, Oceano. I would just like to thank you for the  
5 opportunity. I'm here today to reiterate the letter that Oceano sent the Board of  
6 Supervisors in opposition of the APCD.

7 And I think honestly that we can all say that this proposed ordinance or mandate is not one  
8 of the issues. Because I think everybody's concerned about the health and welfare of all  
9 of our citizens. But from our primary studies, the County will, if enacted -- and you've  
10 heard public comment already about squandering the vehicle traffic and the tourism and  
11 trade. And we estimate about \$10 million a week that this county would lose in revenues.  
12 And we are already in dire straits with the economics. Our community is known to be one  
13 of the lower-income communities in the county.  
14 And so I just brought this letter today to pass it on and just in case that you guys didn't get  
15 it.

16 Thank you very much.

17 **CHAIRPERSON GIBSON:** Thank you, Mr. Searcy. And I do believe the letter from the  
18 OCSD is in our record and responded to.

19 Any other two-minute comments? Seeing none, we'll go to three minutes in the order  
20 that I have them, Dick Wishnek followed by Preston Holdner. And again, if you could  
21 make yourself close to the alternate lecturn, that would be helpful.

22 Mr. Wishnek.

23 **MR. DICK WISHNEK:** I think my T-shirt kind of says my main points. I believe I'm  
24 qualified to comment on the technical aspects of this, but I want to make mostly political

1 comments. But I do have a Ph.D. in engineering. And I've been doing research and  
2 development on surveillance data for 50 years. Have some sensors deployed in  
3 Afghanistan, which I'm proud of.

4 I think given the data staff has presented, it's kind of a no-brainer. The off-road highway  
5 vehicles are causing the problem. Something needs to be done. However, I believe that  
6 asking people to prove that there's a problem is the wrong question. The right question is  
7 can the off-road highway vehicle people prove they're not causing any harm? These are  
8 people's lives, people's lungs involved. I believe that's the right question. I don't think  
9 they can prove they're not causing a problem. Because I think they are.

10 I suggest that the real question that our representatives need to address is which is more  
11 important, the health of 25,000 or so citizens in the Oceano or Nipomo area, or the money  
12 that we get from the off-road highway vehicle community?

13 I understand that some of our neighboring communities don't really have as big a problem  
14 of PM10 as we do in Nipomo or Oceano. But I would urge you to practice love thy  
15 neighbor, to practice do unto others as you would have others do unto you. It may be in  
16 their selfish interest to go for the money and forget the health of their neighbors. I can  
17 understand -- by the way, I have asthma and I've never touched a cigarette. I can  
18 understand why some of you may not care about a 77-year-old old guy like me. You're  
19 not going to change my life expectancy so much. But how about the children? How  
20 about the children of the 25,000 thousand people that are growing up in this environment?  
21 Do you really want this on your conscience?

22 I believe this is a wimpy rule. It's way too slow in the implementation. Wimpy in the  
23 sense that you may get fined only ten percent? Lungs are worth a lot more than that.  
24 But I urge you to pass it, because it's the best thing we have. Thank you.

1 **CHAIRPERSON GIBSON:** Thank you, Mr. Wishnek.  
2 Mr. Holdner, followed by Dave Stevenson.  
3 **MR. PRESTON HOLDNER:** Thank you for the time. I'm going to read from an email that I  
4 sent to our supervisor, Dick Sierra (phonetic).  
5 "As general manager at Trilogy Monarch Dunes in Nipomo, otherwise known as the  
6 Woodlands, and president of their homeowner's association, I'm speaking to express my  
7 support for any and all measures related to the Dust Rule regarding the Oceano Dunes. I  
8 have read all of the data. And in my mind, the link between the Oceano Dunes and air  
9 particulate on the Mesa is clear.  
10 However, if you have some questions about the science, you must put the put the health  
11 and wellbeing of your citizens first. A healthy environment is critical to our 800-plus  
12 residents at Trilogy and for all of the good folks that inhabit the Nipomo Mesa.  
13 I've heard recently that some of you are receiving pressure from special interest groups  
14 that oppose those measures. This is a pivotal decision for each of you as leaders. If you  
15 choose to place the interests of a few lobbying groups ahead of the health and wellbeing of  
16 our residents and our community -- I'm sorry -- our community will be severely  
17 disappointed and will undoubtedly work to make sure that a supervisor is elected in the  
18 future that truly has the interests and health of our constituents at heart. I urge you to be  
19 that leader for our citizens. Healthy citizens make for a robust economy, strong property  
20 values, and a desirable place to live, all of which increases economic activity and tax  
21 revenue for the County.  
22 Supporting these measurings is not only good for the health of our citizens, but for the  
23 health of our local economy. Property values and tax values drive a lot of the revenue of  
24 this county. The Nipomo Mesa has been targeted as one of the strongest areas of growth

1 in home building and where we will be moving a lot of our citizens in the future. If you do  
2 not pass this law, you will drive down the property values on the Mesa, driving down the  
3 revenues for the County in significant excess to the revenues that are derived from the  
4 Pismo Beach Dunes. So any argument that you are losing revenue by passing this is  
5 actually incorrect and false. You will be doing more damage to our local economy by not  
6 passing this than by passing it.

7 In conclusion, I wanted to read a quick quote from Theodore Roosevelt, who's best known  
8 for his quote, "Speak softly and carry a big stick." In my opinion, this rule speaks softly  
9 and carries a small stick. So Roosevelt described his style of foreign policy as the exercise  
10 of intelligent forethought and of decisive action sufficiently far in advance of any likely  
11 crisis. Unfortunately, what we have here is a rule that takes slow action -- has significant  
12 forethought, but takes slow action and has very few repercussions if not followed through  
13 on. So as you consider this rule, I encourage you to pass it. And I encourage you to carry  
14 a big stick if those who manage the dunes do not follow through on what we're expecting  
15 them to follow through on.

16 **CHAIRPERSON GIBSON:** Thank you, Mr. Holder.

17 **MR. PRESTON HOLDNER:** Thank you.

18 **CHAIRPERSON GIBSON:** Mr. Stevenson, followed by Jim Suty.

19 **MR. DAVE STEVENSON:** Good morning. My name is Dave Stevenson. I'm a resident of  
20 the Nipomo Mesa for the last six years.

21 In July of this year, I was diagnosed with COPD. I'm a nonsmoker. And while I cannot be  
22 sure PM10 on the Mesa caused all my problems, I'm sure it's not healthy for anyone, let  
23 alone someone in my condition. I know I was fine when I moved here from Northern  
24 California. This really -- the condition has really affected by quality of life and probably



1 shortened my life expectancy. I have also spent over \$7,000 in the last four months for  
2 medical bills, physical/pulmonary rehabilitation, air purifiers, HEPA filters, HEPA vacuums,  
3 duct cleaning and deep cleaning of our house.  
4 I really question how the Board can even consider not approving this air quality measure,  
5 considering it's creating health issues for all the people that live on the Mesa and probably  
6 in areas nearby. I'm not asking the dunes to shut down the activity of their off-road  
7 vehicles. But I think it would be a small price to pay to do the measures that Larry Allen's  
8 organization is recommending. It seems to me like many of the lobbyists that are  
9 contacting you people are trying to create stall tactics. And any further delay, I believe, is  
10 unacceptable, and it's risking the health of all the residents.

11 Please ask yourself if you lived on the Mesa, would you like to not have this rule passed?  
12 It could affect you and your children.

13 Thank you.

14 **CHAIRPERSON GIBSON:** Thank you, Mr. Stevenson.

15 Mr. Suty, followed by Rachelle Toti.

16 **MR. JIM SUTY:** Mr. Allen, get my slides ready, please?

17 Thank you again. My name's Jim Suty. I'm the president of Friends of Oceano Dunes.

18 We are a 501(c)3 nonprofit, and we represent 28,000 members, many of which live in the  
19 surrounding area, the Nipomo Mesa included.

20 This slide here, number two, shows an aerial view taken straight from the study of -- the  
21 Phase 2 Study of 3.49. Which, again, Dr. (unintelligible) did an excellent job of talking  
22 about the trajectory and how it's going over the dunes.

23 I also want to point out the CDF monitoring site, which is the yellow pin toward the top and  
24 how it's close proximity to Highway 1.

1 Next slide, please.

2 Again, here is showing that proximity to the riding boundary of the SVRA. And as you can  
3 see, the open sand sheets that are closest proximity to that and how the off-road riding  
4 area is farthest away from that.

5 So let's look closer. Next slide.

6 This slide shows the CDF in the bottom-right corner. This also shows the area and the  
7 surrounding areas. To the top left, you'll see an illegal OHV track that is evident next to  
8 the railroad tracks. You'll see train tracks. Train tracks are part of the emitters in the San  
9 Luis Obispo County list of emitters. You also see the refinery entrance and exit streets.  
10 And as you know from previous Counsel meetings, the refinery is increasing its production  
11 and is requiring more trucks to come and go. You also see the close proximity to Highway  
12 1 and a massive new 160-acre development.

13 Next slide, please.

14 This is a text taken right from the design group who was responsible for this. This is a  
15 160-acre-parcel group of 58 one-acre lots. In the second paragraph, the project included  
16 water main lines, storm drain, dry utility, infrastructure (unintelligible), and over  
17 800,000 cubic yards of cut and fill for constructing roads and building pads.

18 I didn't understand what 800,000 yards looks like. Maybe you guys do. Here's a picture  
19 of a dump truck. It's approximately 18 cubic yards. Divide 800,000 by 28, you get over  
20 44,000 truckloads of dirt in a close proximity to the CDF during the timeframe of this. Not  
21 mentioned on the report. Nowhere. So it really strikes us.

22 We, the OHV community, want to maintain the public's health. We are not (unintelligible)  
23 the public's health. We want to make sure we're not taking the full brunt of everything  
24 going on. It's extremely frustrating to have the manager of one of the largest Trilogy

1 development sites, which has done more damage in developing more areas, producing  
2 more dust, than the OHV community has done.  
3 You know, we've got to get real here. We've got to get the data right. And we've got to  
4 work forward. We support making an improvement to affect our impact. But not the  
5 entire county's. Thank you.

6 **CHAIRPERSON GIBSON:** Thank you, Mr. Suty.

7 Ms. Toti, followed by Arlene Versaw.

8 **MS. RACHELLE TOTI:** Hello. My name is Rachelle Toti, resident of the Nipomo Mesa and  
9 a member of Concerned Citizens for Clean Air.

10 After reading the 220-page staff report, which you have before you I guess, I realize that  
11 way too much time is being spent on arguing about wind monitoring instead of PM10  
12 monitors, and whether the studies were done correctly instead of how we can fix this  
13 problem.

14 I agree with Mr. Suty. If there is dust coming off of Highway 1 or an illegal racetrack by  
15 the railroads, we should stop that too. And I agree with Mr. Waage that if particulate  
16 matter is coming off a non-riding area, we should stop that too. I believe that non-riding  
17 area is managed by the State Parks. So they're in a great position to do that.

18 Vegetation limits sand movement. At one time, there was lots of vegetation in the OHV  
19 area. In the letter from Mr. Harris of the California Geological Survey, there is several  
20 figures and aerial photographs of the calendar (unintelligible) Dunes taken in 1930 and '39.  
21 Let's look at three of them.

22 Right, Larry? Can you pause my time while he gets it up there? The first one -- and could  
23 you scroll up and down, please?

24 This shows all of the coastal dunes on the central coast, with the exception of the OHV or

1 Oceano Dunes. The other ones have foredunes, and they have no PM10 problem.  
2 The second slide is a 1930s aerial imagine. I have a pointer here. Let me see if I can get  
3 it. Can you scroll down so they can see the title at the bottom which says "1930 aerial  
4 image"?  
5 Note that the Pismo Dunes preserve, which is at the top, had much less vegetation. Yeah,  
6 keep going. Keep going. Right there. Yeah, look at that. Nothing there. But here's  
7 the Oceano Dunes and the Oceano riding area. All this was vegetation here (indicating).  
8 And then the third slide is the 1930 and the 2010 aerial imagine comparison. The entire  
9 foredunes is gone. Now we see Pismo up there has growth along the coast. All this blue  
10 is what's gone that used to be there in the 1930s. Which you see, the wind goes this way  
11 (indicating). I bet that vegetation would have helped keep some of the particulate matter  
12 down. Just keep that slide up for a minute, Larry.  
13 Mr. Harris states foredune vegetation has diminished within the Oceano dunes SVRA  
14 boundaries. This is probably due to increased recreational activity in the dunes, including  
15 OHV recreation, unquote.  
16 But that should not have affected the foredunes, because right here in the Oceano SVRA  
17 map, it says, "It's against the law to operate a vehicle in a way that disturbs or damages  
18 plants, animals, and cultural resource."  
19 Mr. Harris goes on to tell us how the open sand sheets have decreased, but he included the  
20 Pismo Dunes Preserve. He also states vegetation has increased 80 percent within the  
21 near-riding area. But he does not mention that most of this increase was either fenced  
22 enclosure or non-riding area, which is shown in this map (indicating). And --  
23 **CHAIRPERSON GIBSON:** Ms. Toti, I believe your time --  
24 (Simultaneously speaking.)

1 **MS. RACHELLE TOTI:** In conclusion, I support the Dunes Rule, but I think it should have a  
2 goal of reducing PM10 readings on the Mesa by 50 percent or more.

3 Thank you.

4 **CHAIRPERSON GIBSON:** Thank you, Ms. Toti.

5 Ms. Versaw, followed by William Dorland.

6 **MS. ARLENE VERSAW:** Good morning. As a little sidelight before I start, anybody  
7 who -- despite all the graphs and maps that you can see, if you want to know whether  
8 people at Cypress Ridge have PM10 problems, ask anybody who lives at Cypress Ridge.  
9 They see it. It's in their homes. We can't go out in our backyards. So I don't care  
10 what's put up there. Just ask anybody who lives there.

11 This vote that you are about to take today is critical, and each of you is individually  
12 responsible for the outcome, and thus, for the health and safety of county residents. I'm  
13 not one espousing the closing of the OHV riding park. Fortunately, because of the Dust  
14 Rule, that would not be necessary.

15 Other potential solutions could be more Draconian than common regulatory compliance.  
16 And continued high levels of PM10 pollution is simply unacceptable. I'm here to ask you  
17 to do your job as public officials and to do more than lip service to the concept of  
18 protecting public health. It is your primary responsibility as public officials.

19 The County government is deep in this issue. It owns the La Grande Tract. It has known  
20 for years that the State quality standards are being violated and that Mesa residents are  
21 being exposed to carcinogenic dust from the dunes. It has a regulatory agency that is  
22 trying to resolve the problem. And it is through you capable of taking a step today that  
23 will ultimately stop this public health threat. So the question is do you have the will?

24 Mr. Allen said in his Tribune viewpoint that there's been an orchestrated campaign of

1 misinformation. Shameful intimidation tactics and unethical steps have been taken by  
2 some who oppose the rule. These are tactics that are frequently used. If you want to  
3 delay action, just go on the attack and create confusion. You can say anything you want  
4 on a topic, but that does not make it true. The only confusion here is generated by those  
5 who want to preserve the status quo. It's a slick campaign using politically correct buzz  
6 words like "further collaboration" to delay substantive action and to provide cover to those  
7 who want to pretend they are doing something worthwhile.  
8 I'd like to remind you that without exception, all those who are in opposition to the Dust  
9 Rule have a personal interest in delaying. The APCD does not. It has mandate and a job  
10 to do, and that is what it's doing today. And certainly, our County Public Health Officer  
11 and the peer reviewers and independent participants in the APCD studies have no skin in  
12 the game and would not compromise their professional standing by providing information  
13 in which they did not believe.  
14 Delay is simply not an option. Please vote as if it were your family living in the plume dust  
15 on the Mesa. I think then your choice will be an easy one.

16 Thank you for your time.

17 **CHAIRPERSON GIBSON:** Thank you, Ms. Versaw.

18 Mr. Dorland followed by Pam Dunlap.

19 **MR. BILL DORLAND:** Bill Dorland. I live on the Mesa.

20 I support the rule that the APCD has proposed. I'm disappointed that it doesn't go as far  
21 as I would personally like to see it to go. I'm a resident. Been a resident for over ten  
22 years. I pay taxes. I vote. And I'm very concerned that the government takes some  
23 steps to modify the dust problem that exists on the Mesa. That is a good first step. I  
24 don't think it should stop there. I think the Board should consider this as being a step

1 towards, perhaps, further consideration of what sources there might be besides the  
2 vehicles and take some steps.  
3 I agree with the comments that many have -- that some have made that vehicles may not  
4 be the primary cause. If not, then let's enforce the other rules. Let's make sure the rule  
5 we have goes to solve the problem. Because I think the ultimate economic prosperity of  
6 this county comes in the area of appreciation of the beautiful natural beauty we have, of  
7 the rich agriculture heritage that we have and continue to preserve, and of the fact that  
8 folks who live here enjoy a healthy lifestyle. And that should be the goal.  
9 Thank you.

10 **CHAIRPERSON GIBSON:** Thank you, Mr. Dorland.

11 Ms. Dunlap, followed by Joel Suty.

12 MS. PAM DUNLAP: Good morning, Chairman Gibson, members of the board. My name  
13 is Pam Dunlap. I live downwind of the Oceano Dunes on the Nipomo Mesa.  
14 I want to thank the APCD staff, Larry Allen, and the Board for the countless hours that have  
15 gone into work toward protecting the health of residents on the Nipomo Mesa. I've read  
16 the staff report. I've read all the arguments against the proposed rule. I want to say that  
17 one only needs to walk to the end of the Pismo Pier on a high event day or drive south on  
18 the 101 freeway to know conclusively that the sand dust plume comes from the ODSVRA.  
19 The APCD has known about this problem since the mid-80s. Two studies have shown  
20 conclusively that the particulate readings, which often exceed State standards, are coming  
21 from the ODSVRA. But this information was not made widely available to the public until  
22 last year. Those of us most impacted by the particulates were not aware of the serious  
23 nature of the problem -- excuse me -- and thus, were not taking steps to protect our health  
24 until last year.

1 Some who are against the rule would have you believe that the economic effect of the rule  
2 would be significant to local communities. Neither the rule nor many of us who have  
3 been involved in this process want to close the ODSVRA. We want them to be good  
4 citizens and good neighbors. The economic argument is moot.  
5 You received a significant number of letters yesterday from all over the state. In fact, all  
6 over the nation. I think I saw one from Georgia. Most used boilerplate language to  
7 encourage you to vote against the proposed rule. No doubt the Friends are an effective  
8 lobbying group. But we -- we -- are your constituents, and we are the ones affected by  
9 the particulates.  
10 The studies have been done. The time for providing solutions is now. We are the people  
11 you are sworn to protect. And we ask you to start protecting us today.  
12 I encourage the board to approve Rule 1001 and start the process of giving your citizens  
13 relief from this life-altering pollutant.  
14 Thank you.

15 **CHAIRPERSON GIBSON:** Thank you, Ms. Dunlap.

16 Mr. Suty, followed by Mike Brown.

17 **MR. JOEL SUTY:** Yes. Thank you for the opportunity.

18 One fact that really needs to be made -- if you look at my slide that looks at the year 2009  
19 report about the top emitters in San Luis Obispo, the top emitter was not Oceano Dunes or  
20 the sand dunes. For all the people that have been speaking, the top emitters are:  
21 unpaved roads, which are 33 percent; paved roads, 20 percent; construction and  
22 demolition, 15 percent. So where the real emissions are coming from is roads and  
23 construction. Fugitive windblown (unintelligible) dust is only six percent. So what we're  
24 talking about is fighting the six percent.



1 In 2002 at the CDF Station, they identified that there was particulate PM10 coming from  
2 there. But what they didn't do was analyze the rainfall. If you have a good rainfall  
3 during that year, you have a lot more growth, weeds, plants that help to hold down any  
4 kind of wind blowing off of there. And instead, that particular 2002 study was the first -- it  
5 was the lowest rainfall in 32 years. So it seems that that should be part of the study too,  
6 how much rainfall. And also, what was the wind during those times.

7 Finally, talk about Nipomo Mesa. As you know, Nipomo Mesa has grown dramatically  
8 over the last 30, 40 years. Just since 1990, it's grown 80 percent. It's almost covered up  
9 there. In that growth, there's been a lot of roads, a lot of construction, a lot of dust. Like  
10 Jim talked about, 80,000 -- or 40,000 truckloads of dirt just for this one situation here.

11 The PM10 particulates that are driving those people crazy are also coming from the  
12 environment they're living in with those roads, those unpaved roads, and all the  
13 construction going on. And that wasn't even addressed in any of this study. So  
14 65 percent of your problem is coming from roads construction, unpaved roads in your  
15 entire county. Only six percent comes from fugitive dust. Let's not lose sight of what the  
16 problem is.

17 Thank you.

18 **CHAIRPERSON GIBSON:** Thank you, Mr. Suty.

19 Mr. Brown, followed by Ann Steele.

20 **MR. MIKE BROWN:** Mike Brown representing COLAB.

21 Let me point out that our executive director, Andy Caldwell, is a 20-year resident of the  
22 Nipomo Mesa and has raised seven successful children there without any ill effects.

23 So we think that the question here is, do you really believe that the potential mitigations  
24 will work? You have all this data. The Parks Department is to go off and develop this

1 plan at some considerable expense, spend money monitoring it, do all the work, and then  
2 theoretically by 2015, this is going to have some beneficial effect.  
3 But if that's true and if you really believe that, then why does there need to be an  
4 enforceable rule, regulation, law, with penalties? If we all believe that this can be fixed  
5 up, why wouldn't we just go ahead, collaborate, and do it? The APCD says it's going to  
6 give them technical assistance. They have all these best practices they've collected from  
7 all over the place. The Parks Department seems willing to try to fix it. Why would you  
8 do that, or don't you believe it can work and you want to preposition the regulation so that  
9 you can really hammer them with the fines and put it out of business at some future date?  
10 That's the real question.

11 And then, you know, the APCD staff has said, yes, we've looked at the costs of actually  
12 performing some of the tasks to be able to measure things and do the plan and so forth.  
13 But nobody's actually studied the potential impacts if this gets out of control and it does get  
14 shut down or severely curtailed. And those are questions you haven't explored. And all  
15 of you on this board, which is a derivative board of representatives elected in  
16 general-purpose governments, cities and the County, that have a broad mandate to look at  
17 all kinds of things, need to consider those economic impacts. Otherwise, you're going into  
18 this, you know, flying totally blind. So it's not just a technical issue. And we would hope  
19 you would take that into account. Certainly, if there are things that can be done to  
20 minimize the dust -- hells bells, that development, what is it, Trilogy, cut down more  
21 Eucalyptus trees than, you know, the Lumberjack building out there. It was shocking, so...

22 **CHAIRPERSON GIBSON:** Thank you, Mr. Brown.

23 **MR. JOEL BROWN:** Thank you.

24 **CHAIRPERSON GIBSON:** Ms. Steele, followed by Tom Geaslen.

1 **MS. ANN STEELE:** Good morning. Ann Steele. Appreciate the opportunity.  
2 Hey, I can talk this week. I can talk. Last time I came before the Board, I had some  
3 difficulty with my speech and couldn't talk. My companion refers to me as "horsey."  
4 Sometimes he calls me "froggy" when the dust is very high. So I'm talking today because  
5 it was a clear day when I left my house in Arroyo Grande, and it was beautiful. A little  
6 chilly, but it was gorgeous. So I'm talking, and I want you to recognize the difference from  
7 my previous speech and how I'm speaking today. So I am talking without dust.  
8 So I wanted to show you the day that I was here, what was in my air filter system the day I  
9 was here previously, and the difference between a clean filter and one that was in my  
10 machine the day I was here. And the dust is white. It's not brown. It is not gray. It is  
11 not construction dust. It is yellow, pale white, and from the dunes. Surprise, surprise.  
12 It is not construction dust, as previously told to us by other persons here. It is white. It is  
13 very small. And it is in my filtration inside my house. And when it is high inside my  
14 house, I have difficulty speaking. And when there is a quantity of it, I even have trouble  
15 breathing. It affects how I breathe, how I sleep, how I'm able to participate in my day.  
16 Those persons with COPD, serious lung problems, may not breathe at all at some point.  
17 The illustration is clear. We do not need it. It does not do us any good. It does not do  
18 us any pleasure. It does not give help to the community. It does not make us happy.  
19 So this is my point. You have the ability to stop this dust from entering my house, the  
20 homes in Trilogy, the homes in other locations within the area wind-wise from the dunes.  
21 And I appeal to you, this is not an extraordinary piece of material here. I clean this on a  
22 regular basis. Not unusual. Not unusual. And for my companion to say, hi froggy, hi  
23 horsey today, not a good thing.  
24 Thank you for the opportunity. And I hope that you will make a positive decision that

1 supports this rule to protect my health --

2 **CHAIRPERSON GIBSON:** Thank you, Ms. Steele.

3 **MS. ANN STEELE:** -- as well as other persons.

4 Thank you.

5 **CHAIRPERSON GIBSON:** Thank you, Ms. Steele.

6 Mr. Geaslen, followed by Nell Langford.

7 **MR. TOM GEASLEN:** Mr. Chairman, esteemed board members, Tom Geaslen, resident of

8 Nipomo, interim general manager of Oceano Community, Services Director.

9 I stand up here and I hear all these great health claims. And I'm not denying any of them.

10 But I would like to bring up another fact. And I brought it up before. I've used one of

11 these (indicating) all my whole life. I was diagnosed with asthma. I was born in Southern

12 California. My parents moved know Nipomo. When I'm in Nipomo, my asthma

13 conditions go way down. I live right on the Mesa, 500 yards from the park. My

14 daughter, Lieutenant Kristen Geaslen, did two tours in Iraq. Her last tour was 11 months.

15 Her division removed 800 IED's off the roadways so supplies could get through to our

16 troops. While she was there, she contracted severe bronchitis and preliminary onset

17 asthma. Since she's been home, she doesn't use her asthma medication anymore. I

18 used to deliver Bill Denneen's newspapers in Nipomo when Nipomo was 900 people.

19 Yeah, there's a lot of trees, lot of vegetation.

20 The other thing that I did was I've gone out to the fire departments and ambulance

21 companies -- and only one of them has been able to get back to me -- and I requested the

22 number of emergency calls for breathing disorders. And Oceano was easy, because they

23 sort of sent a report to me. I got the information. I put it out to Cal Fire. And I would

24 like these to be introduced into the record. (Unintelligible) use the overhead. Is that

1 possible?

2 **CHAIRPERSON GIBSON:** Sure. Larry, just power it up and it'll take a minute to warm.

3 **UNIDENTIFIED SPEAKER:** (Unintelligible.)

4 **MR. TOM GEASLEN:** Basically, for the last four years, Oceano Fire Station 61, starting in  
5 2008, we had 45 calls for respiratory incidences, ranging about four a month. Okay?

6 And there's no -- it shows in the record there's no deviance -- there's no higher month or  
7 lower month. In 2009, we had 34 respiratory emergency calls. In 2010, we had 46.

8 And in 2011 -- and granted, the number's not -- we haven't closed out the year yet -- but we  
9 had 43. So if I average that, that's 42 calls a month.

10 Now, I've heard doctors say that they think this is causing all this other stuff. But I haven't  
11 seen any hard facts that say that the dust is causing people breathing problems. It gives  
12 the street locations. Some of these are on the Mesa, some of these are in Oceano, which  
13 the Air Pollution Control District Board only appears to be concerned about the Mesa. But  
14 this goes into Arroyo Grande, Grover Beach and Arroyo Grande. And these are the ones  
15 that we called for.

16 So I'm all in favor of a healthy debate. I told you before I was opposed to it because of the  
17 economics of it. I told you I was opposed to it because some of the stuff didn't make  
18 sense. But I'm bringing you facts today. And my health and my daughter's health are  
19 signatures that this kind of just doesn't carry.

20 **CHAIRPERSON GIBSON:** Thank you, Mr. Geaslen.

21 Ms. Langford, followed by Katrina Dolinsky.

22 **DR. NELL LANGFORD:** Good morning, Chair and Board. I am Dr. Nell Langford, and I am  
23 speaking for Safe Beach Now.

24 Contrary to the last speaker, there are many statistics that don't find their way into the

1 record. My tenants at my beach rental on the strand sometimes can't breathe. I've had  
2 two cases in the last year where they had to leave just because the dust was so high. One  
3 was admitted to Arroyo Grande Hospital and had to stay overnight. It is a serious health  
4 issue. Please be aware that there's statistics in Santa Barbara County that you're not even  
5 getting. Most people in Nipomo go there when their children can't sleep at night and are  
6 crying with their asthma attacks, go to Santa Barbara, not to this county.

7 Each of you are here because you are charged with protecting us from this. The news,  
8 especially the would-be online news, is challenging the impartial studies by your good  
9 board and are saying that they're not valid. You deny the validity of these studies because  
10 you think that the closure of the Oceano dunes will cause you needed revenue. Yet not  
11 one of you, some of you very good with statistics, has bothered to examine those studies  
12 that are being presented by the off-highway vehicle industry to convince you of the big  
13 benefit that they provide. Which they do not. It reminds me of your going along with an  
14 industry, just as the tobacco industry failed to warn us. It's the same situation.

15 Take a look at the businesses in Oceano on Pier Avenue and those at the west end of Grand  
16 Avenue. Please. We are not getting any benefit from off-roading. And we should do  
17 what Pismo did, and get vehicles off our beach immediately.

18 Even if you're going to ignore the Phase 1 and Phase 2 studies, you can't ignore the huge  
19 plume that people are talking about here. You can't ignore that the dunes are the same  
20 age as all the rest of them in California, and they do not emit this dust, and that they are  
21 not -- have this ominous threat to the neighboring people.

22 It's not just about Rule 1001. Take a look at the other rules, CEQA. Take a look at the  
23 Coastal Commission's directive to impose an immediate moratorium if public health is  
24 threatened.

1 The ODSVRA is supposed to contain a nuisance. It has failed at our expense. Were it not  
2 for the lack of political will by your board, something would have been done by this at the  
3 end of the Phase 1 study. But no, more delay. Supervisor (unintelligible), who stepped  
4 down because of his conflict of interest later, could -- he just said for what it's worth, in  
5 2007. Now we're looking at 2014. It's just got kicked down the road too much.

6 **CHAIRPERSON GIBSON:** Thank you, Dr. Langford.

7 **DR. NELL LANGFORD:** Thank you.

8 **CHAIRPERSON GIBSON:** Ms. Dolinsky, followed by Patricia Duron.

9 **MS. KATRINA DOLINSKY:** Good morning. My name is Katrina Dolinsky, and I'm a  
10 Nipomo Mesa resident.

11 The dust is not only detectable with sophisticated air monitoring equipment, but it is so  
12 intense during wind events that it can be seen with the naked eye. Because of that, it is  
13 possible to see it in photographs that provide strong support to the APCD Phase 2 findings  
14 as to where it originates. For those that still want to attack the study saying that it is  
15 natural and sand blowing all along the coast or from roads or agricultural fields, I believe  
16 the following photographs will add visual evidence to the study.

17 **UNIDENTIFIED SPEAKER:** Katrina, could you provide the overhead please?

18 **MS. KATRINA DOLINSKY:** Huh? Excuse me?

19 **CHAIRPERSON GIBSON:** The other Katrina --

20 **UNIDENTIFIED SPEAKER:** Oh yeah --

21 (Simultaneously speaking.)

22 **CHAIRPERSON GIBSON:** -- Madam Clerk.

23 **UNIDENTIFIED SPEAKER:** Thank you.

24 **MS. KATRINA DOLINSKY:** Okay. The first map will orient you to the photos that will

1 follow. Most importantly, the Sand Highway entrance -- right there (indicating) -- to the  
2 landlocked OHV riding area is on County-owned land, the La Grande Tract, 584 acres  
3 intensely used for off-road activities and RV camping.

4 The red arrow indicates the prevailing northwest wind and trains this plume over onto the  
5 Nipomo Mesa 65 day this is year when PM10 levels have exceeded the State 24-hour  
6 standard at the Arroyo Grande Willow -- we call it the CDF site. The red square below  
7 calendar row -- move down through here. Hard to see. This monitoring station records  
8 the highest PM10 in the county. Our community lies upwind of this monitoring station  
9 and in the direct path of the plume. We are deeply affected, as well as other communities  
10 downwind.

11 Next one.

12 We have photographed the plume from a Shell Beach location May 28th and the second  
13 from an Arroyo Grande hilltop April 29th of this year. So one is here (indicating). And  
14 the other one is taken here (indicating). Gives you a different perspective of how the next  
15 photographs you're going to see on a different angle.

16 Thank you. Next one.

17 The top photo is a control photo taken June 6th above La Grande Tract. Warrant Hill and  
18 Sand Highway entrance are between marker posts four and five. So we see Sand  
19 Highway, marker posts four and five. And this whole area here (indicating) is La Grande  
20 Tract. Note the oil refinery behind the line of the trees, as right there (indicating) on the  
21 Nipomo Mesa.

22 The bottom photo was taken on May 28th on a wind event day when the plume lasted for  
23 several hours.

24 Next one.



1 The State, which is 15 micrograms per cubic meter, and Federal PM10 standards at 150  
2 micrograms per cubic meter, were exceeded for several daytime hours, putting residents in  
3 the plume at risk.

4 Next.

5 This is a second view looking southward off the ODSVRA. Note the oil refinery location as  
6 the plume continues on to the Nipomo Mesa.

7 Next.

8 Air quality in our community was greatly decreased for several daytime hours, with PM10  
9 levels reaching beyond the 300 micrograms per cubic meter and termed "hazardous to all."

10 One would think that a dust rule is to protect residents. Instead, this amended rule  
11 coddles the OHV interests. State Parks and recreation OHV is not a collaborator in  
12 predicting our health. It is the polluter who continues business as usual on La Grande --

13 **CHAIRPERSON GIBSON:** -- Ms. --

14 **MS. KATRINA DOLINSKY:** -- Tract without any regard to those affected downwind.

15 **CHAIRPERSON GIBSON:** If you could summarize, please.

16 **MS. KATRINA DOLINSKY:** I'm summarizing these last two sentences.

17 This polluter needs to be accountable to establish State and Federal standards, not  
18 negotiating for 20 percent leeway on meeting these standards, nor special exemptions in  
19 meeting deadlines. We need a stronger dust rule that protects us residents, not OHV  
20 interests.

21 **CHAIRPERSON GIBSON:** Thank you.

22 **MS. KATRINA DOLINSKY:** We need it now, and not with more delays.

23 **CHAIRPERSON GIBSON:** Thank you, Ms. Dolinsky.

24 Ms. Duron followed by Michael Okerblom.

1 **MS. PATRICIA DURON:** Hello. My name is Patricia Duron. I am on the South County  
2 Advisory Council. However, today I am speaking as a private citizen of Nipomo and not  
3 representing the Council.

4 The reason I serve on the Council is that I care deeply about the community, and I don't  
5 support anything that will defer action which would achieve compliance with State air  
6 quality standards.

7 I am concerned with the use of off-highway vehicles on the dunes. It's causing hydrostatic  
8 pressure to be exerted on the soil particles. Pressure is causing the surface layers to break  
9 apart into smaller and smaller pieces as a function of the use of OHV's on the dunes.

10 I am further concerned that a significant source of PM10 and PM10.5 emissions is being  
11 generated on a continual basis by this manmade activity on the dunes, and that the  
12 problem will progressively deteriorate until remedial measures are taken to rebuild the  
13 crust which holds the soil particles together and prevents downwind particulate matter  
14 transmission.

15 This so-called conclusive correlation with OHV and the SVRA and PM10 impacts on  
16 downwind monitors should not obstruct implementing remedial measures. The  
17 consensus of the people in the affected neighborhoods is that where serious health, safety,  
18 and welfare concerns are raised, there is a rational basis to impose a moratorium on the  
19 use of OHV's on the dunes.

20 The compounds found on the downwind monitors consist of the same crustal materials  
21 found in the OHV area, not construction sites.

22 We want clean air. The APCD has a mandate to bring all areas under their jurisdiction into  
23 compliance with State air quality standards. The APCD is not achieving that goal in the  
24 Nipomo Mesa. I am disappointed that the APCD is not taking more aggressive action,

1 especially where the health of individuals in the Nipomo Mesa are being jeopardized on a  
2 continual basis.

3 It is the responsibility of the community and the State to take more aggressive action to  
4 abate the nuisance that is causing this problem and to protect the affected communities.  
5 We would be remiss in our responsibilities to delay until May of 2015 before the CDVAA  
6 operator acts on his duty to ensure that the 24-hour PM10 concentration does not exceed  
7 55 micrograms per cubic meter when citizens are being affected now and every day. This  
8 continues?

9 The State's duty to implement a plan to ensure attainment of State and Federal ambient air  
10 quality standards should already be on the table. And why doesn't the APCD's website  
11 have a link to the State's Implementation Plan to bring the Nipomo Mesa into conformance  
12 with Federal air quality standards?

13 I ask the APCD to reconsider the compliance schedule aspect of the rule and to take action  
14 sooner, if not immediately.

15 Thank you for considering my comments.

16 **CHAIRPERSON GIBSON:** Thank you, Ms. Duron.

17 Mr. Okerblom, followed by Larry Versaw.

18 **MR. MICHAEL OKERBLOM:** Hi. My name's Michael Okerblom. That's my mother.  
19 We are part of a group of people who have been concerned about this issue and talking to  
20 the Board of Supervisors about it for more than two years now. And our consensus is that  
21 this rule, although it is --

22 **UNIDENTIFIED SPEAKER:** (Unintelligible.)

23 **MR. MICHAEL OKERBLOM:** -- is a step in the right direction. We don't understand why  
24 we have to wait until 2015 before -- before we have -- before the APCD starts enforcing

1 the -- or requiring the CDV -- the operator of the park to ensure that emissions are not  
2 blowing out of the property that he's in control of that are causing the downwind neighbors  
3 to be in excess of the State standards for attainment.

4 We're also concerned that the APCD is not addressing the days that the Nipomo Mesa is in  
5 Federal non-attainment. Because we would like to see a State Implementation Plan.

6 Because we believe that this problem is going to progressively worsen. As the soil  
7 particles are broken into smaller and smaller and smaller pieces, there will be more PM10  
8 on the beach.

9 And I don't see why we're making an issue out of whether there's a control site monitor,  
10 whether there's not a control site monitor, whether the downwind area -- we're trying to  
11 prove that this is a problem that is associated with immediate vehicle activity use, is what  
12 we're trying to do, before we put a burden on the vehicles to stop -- or before we even stop  
13 enforcing this, taking any enforcement measures.

14 I want to switch topics. Thomas Roth, he has 30 points he makes in his letter. And in  
15 point number 28 he says, "During any period of litigation challenging this rule, the rule  
16 cannot be used by the SLO APCD as part of a State Implementation Plan."

17 I know we don't have a State Implementation Plan now, and Larry has said that he doesn't  
18 intend to make this rule be part of a State Implementation Plan. That's disappointing to  
19 me, because I've been trying to find under the Clean Air Act some remedies for private  
20 citizens to do something about this. Because we feel like the APC is dragging its feet on  
21 this, taking too long, and we're breathing bad air. His response to the comment was that  
22 the comment was noted. And I'm very concerned that that might mean that the Friends  
23 of the Oceano Dunes may be able to drag out litigation for a long time, and we'll have to  
24 wait longer. I hope that's not the case.

1 **CHAIRPERSON GIBSON:** Thank you, Mr. Okerblom.  
2 Mr. Versaw, followed by Bob Cardona.  
3 **MR. LARRY VERSAW:** Good morning, Chair Gibson and Board. It is still morning.  
4 Couple of observations and questions that I have that I'd like to share or ask.  
5 First of all, I'd like to say that this recent and now ongoing character attacks on Mr. Allen  
6 and this APCD staff, I think are shameful. I know it's a tactic that's pretty common. But I  
7 would like to think that it's not something that has to be used here in our neighborhood in  
8 issues that we're discussing here. The thought that if you can't win with facts and reason,  
9 then you destroy the character of the opponents, or try to destroy their character and  
10 therefore, their credibility, is not something that we should have to put up with. We're  
11 seeing way too much of it.  
12 It occurred to me today that while I was watching Mr. Waage's presentation -- no  
13 connection between my earlier comment -- but watching Mr. Waage's presentation, I  
14 understand that the work done by the experts that were hired by APCD to do the work on  
15 the dunes was peer reviewed, sometimes by three different agencies that came together.  
16 So that information was checked and doublechecked. I'm not sure of any peer reviews  
17 that Mr. Waage has had on his information. And yet, we have individuals and groups that  
18 are basing their comments and their decisions, maybe their position, on what Mr. Waage  
19 has had to say to them without any verification. I think with all due respect to Mr. Waage,  
20 he's getting a pass here. He's making these presentations at City Council meetings and  
21 elsewhere and not having to stand up to the scrutiny of other experts in the area. Might  
22 question it.  
23 In regards to this regulation that's being proposed, I was happy to hear the State Parks say  
24 that they appreciate that there is a health issue on the Mesa and they, for their part, would

1 like to work towards a solution.

2 The problem I have with where it goes from there is that State Parks wants no regulation on  
3 it, they want no enforcement on the regulation. And I ask you what regulation of this  
4 nature has ever been successful on a volunteer basis from an unwilling participant? I  
5 don't think it works. And I think it's appropriate to have it in place. The enforcement  
6 end of this is not to stop State Parks or to hurt State Parks. The enforcement aspect of it  
7 is to encourage that collaboration that State Parks would like to offer to go forward and  
8 make sure we do reach real solutions.

9 And lastly, I'd like just to say that I'd like to say if you even thought that the issues going on  
10 out here that we're trying to address cause health problems, that you should support this  
11 regulation, the rule. But if you think it's going on for darn sure, you've got to support this  
12 rule. It's the only ethical and moral thing that you can do.

13 Thank you.

14 **CHAIRPERSON GIBSON:** Thank you, Mr. Versaw.

15 Mr. Cardona, followed by Charles Getzoff.

16 **MR. BOB CARDONA:** Good afternoon, and thank you for opportunity to speak here.

17 I think the more that I listen to each and every individual, you can see the various sides and  
18 how I think everyone is partial to their own opinions. And whether it's a financial gain  
19 personally -- and I don't mean by a community -- or whether it's a gain we have, we want to  
20 say for our health, whatever issue that it is that drives us with such emotion, it has all to be  
21 taken into consideration by all of you. And it is very controversial.

22 We're here today to talk about this ruling on the 1001 rule. I really sincerely feel that I  
23 think not on purpose were some of these statistics and data being misrepresented. But I  
24 think that -- possibly, wholeheartedly the intent was to be certainly honest. But at the

1 same time, I think they are being misrepresented. And I am against ruling in favor of Rule  
2 1001 because of what we hear.

3 I want to thank Mr. Waage for his information, and others. And certainly, though we have  
4 a variety of scientists that have come up here to speak in favor or against, maybe  
5 sometimes scientific studies, this is the way that it is until we get to the bottom of this. I  
6 don't feel that the -- and I have to say "flawed" only because of possibly the way it was  
7 represented -- is the right way to go.

8 I want to start this out here. I know our health concerns relating to the PM10 dust  
9 movement is really one of the key issues and how do we control it.

10 But yet, we hear from the Nipomo residents that are here, and there are a multitude of  
11 them today, that have been in this area 10 years, 12 years, 8 years, 6 years. They love the  
12 area, but the dust that the -- the movement of the PM10 dust is, indeed, certainly -- I'm not  
13 taking about dirt. I'm talking about dust from the sand and the sand -- but we all know  
14 who have lived around here many years that Nipomo Mesa really is part of the sand. And  
15 maybe it's a different type of particulate. But because of the elimination of the tree forest  
16 that we used to have out there, which was a natural helpful barrier from that dust moving  
17 and the reduction of those eucalyptus out there, this has helped increase, then, the  
18 movement of the dust. So do we blame the new residents, the new home builders, the  
19 new road makers, the new people that move in? Do we start containing the growth factor  
20 in Nipomo for their own good? What is that answer there? Widening of roads, higher  
21 speeds, and more open space.

22 Now I'm concerned because now it's up to Parks and Recreation to go out there and to  
23 start looking at planting vegetation when as you go east up from the beach, they're taking  
24 the vegetation out. Certainly, it's not oak trees, so you don't need a specific permit to

1 remove those eucalypts. But maybe all of that should be taken into consideration, as I  
2 mentioned to begin with.

3 **CHAIRPERSON GIBSON:** Thank you, Mr. Cardona. Appreciate your comments.  
4 Mr. Getzoff, followed by John Barta.

5 **MR. CHARLES GETZOFF:** Good morning. I guess I can still say good morning. Just  
6 barely made it in. I thank you for your patience in listening to all of us.  
7 My name is Charles Getzoff, 30-year resident of Nipomo. And I support the adoption of  
8 Rule 1001. I think that as looking at the staff reports, it shows it's technically consistent.  
9 I also believe reading the 222 pages attached to the staff notes, that they gave good  
10 answers to credible, technical questions regarding the subject. And I think that further  
11 re-enforces the technical basis.  
12 See, the health of the residents is the most important concern. And I think Rule 1001, it  
13 establishes a framework that represents the interests of all stakeholders. It's not perfect.  
14 It probably hurts everyone a little bit. Both sides, like all parties, would probably like  
15 things a little different. And that's probably a good indicator. It probably means it's a  
16 good compromise.  
17 And for me, a Nipomo resident, I'd like the mediation to be done quicker. But I realize in  
18 the real world with checks and balances, it can't be -- there's a significant amount of  
19 lobbying with the intent of guaranteeing no impact to the OHV riding area. And I don't -- I  
20 think that this is not a responsible solution. I think that mitigating measures are necessary  
21 to reduce the PM10. We Nipomo residents, we live with approximately 65 days a year of  
22 air that does not meet requirements. And if you compare that to people that come in and  
23 recreate on the dunes for a short trip and leave, we live with it. And that's why I think the  
24 air quality's a very significant issue.



1 As far as the treatment of the issue, it reminds me of the furor over the fact when we tried  
2 to ban smoking in restaurants and bars. There were predictions that there'd be just dire  
3 results, that they would go out of business. Well, even with the disinformation of  
4 lobbyists, it didn't happen. Those businesses are now healthy. And I think this same  
5 thing applies to the OHV area. To enact some remediation measures out there will not kill  
6 that recreation. It's just part of their cost of doing business.  
7 I see, since I'm running out of time. I found this little pencil. I picked it up from farmer's  
8 market from an APCD booth in the early 1980's. And it has a statement on it. It says,  
9 "Clear air is everybody's business." So I hope that the APCD Board will act on this mission,  
10 protect the public health by adopting Rule 1001. Thank you.

11 **CHAIRPERSON GIBSON:** Thank you, Mr. Getzoff.

12 Mr. Barta, followed by Geri BeDell.

13 **UNIDENTIFIED SPEAKER:** Document camera back up?

14 **MR. JOHN BARTA:** Good morning, Mr. Chairman and members of the board,  
15 carbon-based life form one and all. My name is John Barta, and I reside in Morro Bay. In  
16 the past, I have served for many years on a public board. And I also have given a good  
17 deal of thought to the public process and the role that decision-makers make in that  
18 process. I'm not a dune buggy person, and I've never ridden on the Oceano dunes.  
19 There is a common narrative that is developed regarding to dunes and dust. It goes like  
20 this: There is dune crust that vehicles break and in so doing, they release dangerous  
21 particulates into the air.

22 I've read and heard this narrative many times, most recently in a conversation with a local  
23 City Council member. This narrative is critical because it is the single thing that directly  
24 ties off-road vehicular use to the particulates in the air that have so many folks concerned.

1 It bears serious examination.

2 What I have discovered is that the entire APCD study, there's a grand total of five sentences  
3 and one photograph talking about this. That's it on the board (indicating). Five  
4 sentences. One photo. And as much as this is the central narrative to the problem and  
5 solution, I expected a great deal more. For example, I'd like to know what is dune crust?  
6 And how exactly is it formed? And how much of it is found outside of the dune buggy  
7 area? And I'd like some numbers, please. And some maps of where it exists and where  
8 it doesn't exist. But none of that has been done. I repeat, none of that has been done.  
9 I'm not alone in my concern over the need for more study. Here's what two of your own  
10 experts have to say. And I quote, while I have seen the crust out on the dunes firsthand, I  
11 do not consider myself an expert on itself formation. This question would best be  
12 answered by a sand dune morphologist with local expertise, end quote. That was Tom  
13 Murphy, a contributor to the study and also, interestingly, one of the peer reviewers.  
14 Tom Kayhill [*phonetic*], principle author of the study, had this to say, quote, I included a  
15 picture in my report. But beyond that, little is known. It appears to form in the presence  
16 of moisture, but when crushed, it appears to be just sand. We did not discover it in time  
17 to make depth chemical profile, which would have given info on the presence of biological  
18 components and sea salt. We will do this on our own time sometime, I'm sure. We want  
19 the question answered too, end quote.

20 And lastly, I'd like to quote from one of the five sentences in the report. Quote, the soil  
21 crust was observed throughout the open sand sheets upwind of the Oso site, but was not  
22 present in the SVRA, end quote.

23 Please pause and think about that last sentence. And then ask yourself this question: If  
24 the crust is not observed in the SVRA, how can dune buggies be breaking it and causing the

1 pollution from that breaking? You are poised to impose very specific regulations affecting  
2 dune buggy use on the beach and the imposition of fines on this thread of causality, yet  
3 these serious questions remain unanswered.

4 I urge you to follow the cautionary principle and not put the cart before the horse. You  
5 should not be making rules and proposing fines until you have a clear understanding of  
6 what is going on in the dunes. Science is supposed to matter here. I'm going to repeat  
7 that. Science is supposed to matter here. Settle the science first, and only then start  
8 making rules based upon the results.

9 The dunes have been here for thousands of years, and more are being formed all the time.  
10 And that's not going to stop. In fact, each hour, approximately 1,000 pounds of new sand  
11 arrives on the beach.

12 No one could blame you for voting no today and insisting that you get it right first. And I  
13 would add, if you plunge ahead at this time, you are guaranteeing a future full of litigation,  
14 lack of scientific understanding, and anxiety for the very people you are supposed to be  
15 here to help.

16 **CHAIRPERSON GIBSON:** Thank you, Mr. Barta.

17 Geri BeDell, followed by Kevin Rice.

18 **MS. GERI BeDELL:** Good morning, APCD board. Thank you for your patience. My name  
19 is Geri BeDell.

20 Those who oppose the APCD recommendations often use economic arguments to oppose  
21 the implementation. But these arguments are not very convincing. Even the statistics  
22 compiled by the marketing group hired by State Parks minimizes the economic impact of  
23 visitors to the dunes. Strategic Marketing Group, SMG, found in their survey that only  
24 12 percent of respondents were locals; therefore, one might assume that the other

1 88 percent have traveled from out of the area and might spend money in the county.  
2 However, 76 percent of these visitors camped on the beach or in campgrounds. Their  
3 units are self-contained. They bring their own food and drink. They bring their own  
4 equipment from home. And their financial benefits are vastly overrated. They don't  
5 even pay bed taxes. The SMG survey does not include the cost these visitors create for  
6 the County; infrastructure costs for emergency services, fire department responses, law  
7 enforcement, traffic safety and control, road maintenance, waste management, hospital  
8 costs, and the list goes on.

9 The survey claimed that only about two-thirds of those who were questioned identified  
10 that they would visit the area if the dunes were not open to vehicles. But it makes no  
11 mention whatsoever of how many more new visitors might come in the area if the beaches  
12 were open to normal, safe beach activity with no vehicles on the beach. And I might just  
13 add that Pismo Beach eliminated the vehicles many, many years ago, and are doing quite  
14 well.

15 The Board has been very diligent in acquiring data for its study of air quality. I simply ask  
16 that the same kind of diligence be paid to counterarguments such as alleged financial  
17 impact.

18 Thank you. And I might just want to add, my husband can't be here, but he wrote a letter  
19 to the editor. And I'll read that briefly.

20 "Larry Allen's viewpoint commentary in the Tribune of November 13th, 2011, is lucid,  
21 accurate, and courageous. Science has been repeatedly under attack locally and  
22 nationally. Millions of Americans are fed up with those who whine whenever science and  
23 reason don't support their beliefs, their desires, or their financial interests. They blame  
24 scientists, academics, and teachers. They don't want scientific truth. They want

1 convenient truth. They want their own truth. Larry Allen has listed the findings of the  
2 APCD's scientific studies. Those who don't like the findings will probably once again attack  
3 science.

4 **CHAIRPERSON GIBSON:** Okay. Mrs. BeDell, I'm afraid your time has run. Do you have  
5 a copy of that you could leave with us?

6 MS. GERI BeDELL: Yes, I do --

7 (Simultaneously speaking.)

8 **MS. GERI BeDELL:** -- and I just want to thank Larry Allen. Thank you very much.

9 **CHAIRPERSON GIBSON:** Thank you, Ms. BeDell.

10 Mr. Rice is my last member of the general public to speak. So unless I see anyone indicate  
11 otherwise --

12 Mr. Harris, I think we'll lump you in with the State Parks, unless you have specific...

13 **UNIDENTIFIED SPEAKER:** (Unintelligible.)

14 **CHAIRPERSON GIBSON:** Okay. Come on. And we'll take you next, Mr. Harris.

15 Mr. Rice?

16 **MR. KEVIN RICE:** I wonder if I can get this to work here today.

17 APCD STAFF: What are you trying to do?

18 **MR. KEVIN RICE:** Connect my laptop to the overhead.

19 APCD STAFF: Okay. If I know ahead of time I can do it.

20 **MR. KEVIN RICE:** Sorry.

21 APCD STAFF: No problem.

22 **MR. KEVIN RICE:** Indeed, we do want science. And we've been bringing up the same  
23 points for what, 20 months now. Problems with the peer review, problems that we have  
24 with the study. And we've yet to have a serious discussion in front of the Board about

1 some of these points that I believe should be considered. One of the letters that came in  
2 late yesterday was from a scientist at UCLA who contends problems with some of the PM  
3 standards.

4 The air on the Mesa is not this horrendous monster it's being made out to be. It doesn't  
5 even reach the Federal limit. Yes, it's over the California State limit. And this particular  
6 letter speaks to that issue. But I don't have the time to talk about this very long, because  
7 I've got a lot of points to make.

8 No one disputes there's dust blowing inland off the dunes. I've said it again and again.  
9 There's 500 million pounds of sand blowing off the ocean every year. A thousand pounds  
10 a day or an hour, whatever the previous gentleman said. That's according to the  
11 USGS 2006 Shoreline Change Report.

12 This is a stand of eucalyptus trees cut down on Highway 1 (indicating).  
13 Another picture of that same stand of trees.

14 And turned to mulch. If we're concerned about our community, why are we letting these  
15 natural filters be cut down here?

16 There's problems with the rule itself. You've got a notice problem. The website right  
17 now at this very moment shows the draft of October 12th. This is a completely different  
18 version than what's in front of you in your packet. Health and Safety Code says 30 days  
19 notice. And within the last week or so, staff has took it upon themselves to make  
20 amendments and alterations that still are not in front of the public on the APCD's own  
21 website.

22 I brought up some issues. I'm very pleased that staff acknowledged the 20 percent margin  
23 error of the equipment. However, if you look in my comments -- and this is the table in  
24 my comments -- sampling effectiveness for solid particles. And we are dealing with solid

1 particles, crustal material. Sampling effectiveness is no more than five percent above that  
2 obtained for liquid particles of the same size. What that's saying is there needs to be  
3 another five percent margin of error built in, and the rule should be talking about  
4 25 percent to be within the margin of error of the equipment.

5 And I just wanted to bring up a few points from Nellis Dunes. Yes, we want to talk about  
6 science. Nellis Dunes, Nevada. This was a one-year study. "Drivers should stay on the  
7 trails at all times, except in the un-vegetated dunes, where driving does not increase dust  
8 emissions and does not disturb the soil. When considering dust emissions generated by  
9 ORV use, it is not necessary to reduce driving speed in the un-vegetated dunes, because  
10 that activity has little effect on dust emissions. Drivers should stay on existing trails,  
11 except in un-vegetated sand dunes."

12 And it goes on and on. There's plenty of conflicting science. You need to consider the  
13 science.

14 **CHAIRPERSON GIBSON:** Thank you, Mr. Rice.

15 Mr. Harris?

16 **MR. WILL HARRIS:** I have a presentation for PowerPoint.

17 **UNIDENTIFIED SPEAKER:** (Unintelligible.)

18 **MR. WILL HARRIS:** Good afternoon, board members. First one to say that. My name is  
19 Will Harris. I'm with the California Geological Survey. Thank you. And I am a geologist  
20 with the survey. I've been with them since 2001. I'm a California licensed professional  
21 geologist, a California licensed certified engineering geologist, and a certified  
22 hydrogeologist. I have 25 years of professional experience and, like I said, more than ten  
23 years with the State Geological Survey.

24 I've been working out at Oceano Dunes since 2007. A lot has been stated with regard

1 to -- Larry, go ahead and if you could, just right click? Thank you.

2 A lot has been stated with regard to -- with the issue. But it's really not that complex. It  
3 has been made complex. Saltation is what we have talked about, which is really just sand  
4 being blown by the wind and some smaller particles released as a result that do generate  
5 PM10. That's a natural process. Now, there's been debate as to whether or not it's OHV  
6 riding or not.

7 As I indicated in my submittal letter on November 1, that we did have issues with the CDF  
8 station. If you could go to the -- I'm sorry. Leave that one up. The CDF station is here  
9 (indicating). And this is an S1 wind tower (indicating). What the APCD did was  
10 couple -- as this has been mentioned, but it's important to bring up. They coupled wind  
11 movement on this dunes with wind movement at CDF.

12 If you could go to the next slide please, Larry.

13 This is a chart measuring -- that shows average hourly wind speeds at the wind tower on  
14 the dunes, Mesa2, and CDF. Take this May 3rd date. That's roughly almost 30 miles per  
15 hour. About 25 here. And this is less than 10 down here at CDF.

16 Why this is important is because the sand movement had been coupled with CDF wind  
17 speeds to say that sand moves more readily on the dunes, within the riding area, than  
18 elsewhere. In fact, the APCD has conceded in their reply to my November 1 letter that  
19 CDF is not the right place to couple sand movement with the -- with the wind speeds. And  
20 instead, it would be better to couple it together where the sand actually blows. Which is  
21 what we intended to do with S1, along with a whole network of wind towers.

22 This is unfortunate, because we had misgivings about the CDF tower back in 2007.  
23 November 1 of 2007 is when we were concerned with that tower. And Bruce -- or excuse  
24 me -- Mr. Gibson, if you would indulge me a little bit.



1 **CHAIRPERSON GIBSON:** Sure.

2 **MR. WILL HARRIS:** Thank you.

3 We had issues with that CDF tower in 2007. We indicated in an email to APCD staff that

4 we were concerned about it being in a hollow and that there would be winds that would be

5 influenced by the local terrain. We also then brought up the concerns with CDF in the

6 November -- excuse me -- in the March 2010 submittal to the Board, our review of Phase 2.

7 And now most recently, we bring it up in November 1. Finally, it has been acknowledged

8 as a legitimate concern. But now it's four years. Literally to the month.

9 If you could go to the next slide please, Larry.

10 While conceding that CDF is not the best tower, they said S1 is problematic because it is on

11 a, quote, flat beach area. This is a picture (indicating) of one of the pilot projects

12 undertaken by DRI. And in the right center of the -- it's hard to make out here. But right

13 about here (indicating) is where the S1 tower is. This is in the foredune location, the

14 foredunes of the riding area. And I would dispute the accusation that it is -- not

15 accusation, but the claim -- that it is a flat beach area. One, because the DRI experts that

16 were collaboratively hired by State Parks and the APCD, chose this spot as one of their pilot

17 project locations. And two, I think most -- or formidably -- is that you have a dune that's

18 migrating into the hay bail area.

19 I only illustrate -- I bring this up and the delay in what we initially indicated as a problem

20 with certain locations, because it generates a huge amount of debate, a huge amount of

21 expense, and a huge amount of time passes.

22 Now, I have worked with the APCD staff. And I actually enjoy working with these folks. I

23 respect Larry's experience. I very much enjoyed working with Joel, with Dave Whitney,

24 Darrel out in the field. And I'd say we work most cooperatively when we were

1 undertaking the pilot project work.  
2 I would welcome investigations to help us mitigate saltation. But in terms of the point  
3 about saltation being generated more readily because of OHV activity, that has not been  
4 demonstrated by the Phase 2. And that is why we're here now. The draft rule is based  
5 on the Phase 2. I'm not -- I have no skin in this game. I get paid by the State of  
6 California. It's not like I'm going to get more money one way or another. I just want to  
7 point out good science. And if we could investigate this in terms of trying to minimize  
8 saltation, I think it would be a very worthwhile investigation, very interesting professionally.  
9 And again, I would welcome the opportunity to work with the APCD.  
10 Thank you.

11 **CHAIRPERSON GIBSON:** Thank you, Mr. Harris.

12 With that, let me go to Mr. Jenkins. He indicated that somewhere -- around ten minutes  
13 or so. You and Mr. Reed, I'd be happy to receive your input at this point.  
14 I will now close it to the general public, and this will be our last presentation.

15 **MR. MR. PHIL JENKINS:** Thank you. I wanted to begin not by focusing on any of the  
16 areas of disagreement that we have and -- yeah. There you go. Get that slide show  
17 started.

18 I wanted to begin by looking at some of the areas where we do have agreement. We all  
19 agree -- and I think we have all agreed throughout our various discussions and every time  
20 I've been in front of this body -- that PM10 issues on the Nipomo Mesa need to be  
21 addressed. It's a serious issue. It deserves the serious attention of all the public  
22 agencies that have input, impacts onto what's going on out there.

23 My concern along that line is that it appears over time that there's been this impression  
24 that State Parks has been sitting back passively waiting until somebody tells us what to do

1 or until somebody tells us we have to do something. Quite the opposite. I wanted to  
2 just go over briefly what we have been doing in recent years.  
3 If you could go to the next slide.  
4 In 2009, December of 2009, we published our strategic plan, which included a number of  
5 goals and objectives for our program. This strategic plan dealt with our management of  
6 OHV recreation throughout the state, both in SVRA's that we own and operate directly, as  
7 well as areas where we support OHV recreation and manage the activity through grant  
8 funding.  
9 This strategic plan received rigorous input and review from public meetings up and down  
10 the state. Our commission had a lot to say about it as they reviewed it. Some of the  
11 people that were in the audience earlier were actually at some of those commission  
12 meetings when our plan was under review.  
13 Most particularly, I want to draw your attention -- next slide, please -- to goal 1.5. So as  
14 we were putting the rule together -- and we began around mid-2007 working on it  
15 throughout 2007, 2008. Published it in 2009. We were identifying our top issues that  
16 we needed to deal with systemically throughout the state. Goal 1.5, we set. And this is  
17 enforced by our commission, I might add. And, you know, they -- so we always report to  
18 them where we were on our goals. And we have to report to them regularly about  
19 progress towards those goals. And as we request funding from the State, we have to tie  
20 what we're doing and how we use that funding in relation to these goals. You can see  
21 that as early as 2009 as we were putting this together, we stated -- put the onus on  
22 ourselves, if you will -- that by 2014, we wanted to implement a dust monitoring and  
23 management program with the aim of reducing the amount of dust generated by OHV's.  
24 You can see the performance measure that was chosen was particulate levels generated by

1 OHV activities. And of course, there's some resource assumptions that, looking statewide  
2 at the various locations where this is a concern, that we would need to add new staff,  
3 perhaps some new funding for equipment, et cetera. So we were anticipating this day  
4 that we were going to need to be moving forward on addressing dust issues.

5 Next slide, please.

6 Over time at the Oceano Dunes -- so that was the broad picture, statewide. Let's come  
7 down to the local picture here at Oceano Dunes. We have been working on revegetation  
8 projects in the dunes since the 1990s. As a matter of fact, my own senior project at Cal  
9 Poly was on revegetation of the dunes. So I feel like I've lived this issue for quite some  
10 time.

11 Over all those years, our staff at the dunes -- and I just have to compliment our staff at the  
12 dunes for the hard work that they do. They see what they're doing as coming more than  
13 just to work every day and putting in your time and going home. Our staff out on the  
14 dunes really cares about managing that area, protecting that area, and working in the best  
15 interests and tradition of State Parks. Putting in some of these projects for revegetation  
16 in that environment, it's dirty, nasty, hard work. Because it's soft, it's slippery. If you've  
17 ever tried to walk up a sand dune, you know just the physical intensity of labor sometimes  
18 that's involved. They do it gladly because they're invested in the results.

19 As we begin to revegetate -- and we've been doing revegetation throughout the last several  
20 years. While we have all been going back and forth on a rule or no rule or science or no  
21 science, the staff out at the dunes has been continuously working to put more vegetation in  
22 the dunes.

23 The first step is they'll go out with straw bails, and they'll blow that across the dunes.  
24 Because you have to establish something to hold the sand in place as you begin to

1 revegetate.

2 Next slide, please.

3 Once it's out there, you have to hold it in. You've got to make sure that the sand doesn't  
4 just blow away. You can see on the upper left, that's called a sheep's foot. So it's just a  
5 big roller that's got a lot of punches is it. They'll roll that across the flat areas of the sand,  
6 and that punches the sand -- the straw down into the sand so it holds it in place.

7 In other instances, like you see that bottom slide, how steep that hillside is, all of that straw  
8 was punched by hand. So people going through there on their hands and knees with  
9 piles -- you know, with bundles of straw, punching that into the sand. After they punch  
10 that in, that creates a bed that now you can begin to revegetate.

11 Next slide.

12 We put in a seed mixture that includes several different types of seeds over the years  
13 through trial and error. Because most of the revegetation projects that we tried in the  
14 '90s when I was involved had limited success. You might have some immediate success,  
15 but over a period of ten years, they weren't holding.

16 They've come over the years now with trial and error to some pretty good methodologies.  
17 And we use a mix of annual seeds that put some immediate roots down, and then  
18 long-term seeds so you get a better effect over a longer period of time of stabilizing the  
19 sand.

20 Next slide.

21 We also plant -- you can see that container full of seedlings that's being planted. We also  
22 plant more mature plants, so it's not all just from seed, into the dunes, because that gives  
23 us a head start on stabilizing those dunes.

24 You might ask where do we get all those plants. Next slide, please. We have quite an

1 extensive greenhouse operation that we fund out there so that we grow all of our own  
2 plants.

3 And Ron, you can correct me if I'm wrong, but I think we get most of our seeds out of the  
4 dunes themselves so that we're not introducing nonlocal variances of species out into the  
5 dunes.

6 Next slide, please.

7 So after the first rain, this is a -- the series of slides I'm going to show you next is a  
8 revegetation project that we did out by Boy Scout Camp just in the last couple of years.  
9 This was after the first rain. You can see the straw still there and the grass beginning to  
10 come in.

11 Next slide.

12 Here's that landscape view at about the same period, after that first rain. You can see all  
13 that bare sand. It's beginning to be vegetated.

14 Next slide.

15 Six months later, starting to get a little more vegetation in there.

16 Next slide.

17 That's the February 2008. It's really starting to take hold.

18 And then finally, I think we have a 2009 slide. You can see some of the bush loop and  
19 some of those other things grow in. We get a lot of -- a lot more longevity on the stability.  
20 We've been doing more projects than just the Boy Scout Camp. ConocoPhillips, we did a  
21 big restoration in there in the last couple of years.

22 Next slide.

23 Oso Flaco Boardwalk. For those of you that were able to join us on the tour, you were  
24 able to see this Oso Flaco Boardwalk revegetation at a more advanced stage than this

1 photo indicates.

2 Next slide there.

3 Along the pipeline, which is in the deepest part of the riding area. The pipeline goes from  
4 the ocean all the way back into the ConocoPhillips area. So we're stabilizing some of  
5 those sand sheets.

6 And then this is once again that 40-acre -- they call it the 40-acre restoration. In this case,  
7 it's about 28 acres of the 40-acre wood. The 40-acre wood is a locale name for the dunes.

8 In conclusion to that part of it, I think what's important to remember -- because there  
9 seems to be this fear on the public's part that many people have expressed that if this rule  
10 isn't passed, State Parks won't do anything. What I wanted to make sure that you are  
11 aware of is that we have an existing program of putting in vegetation. We've been doing  
12 it for years. We've been learning how to do it better. We've been doing it continuously  
13 throughout this process, not waiting until the rule was done and the PMRP was done, and,  
14 you know, if somebody will just tell us what to do, we'll go do it. We've been doing our  
15 best to make progress in the meantime. We've put in about 10 to 20 acres of  
16 revegetation per year. It's part of our ongoing budget. Certainly, the PMRP undoubtedly  
17 will be looking at whether we need to ramp that up. And then we'll have to look for  
18 additional funding to support that.

19 But the key is that PMRP, the Reduction Management Plan, is going to help us determine  
20 where to put those resources in that are most effective. Right now, our staff has been  
21 putting in over the years vegetation on, you know, advancing toes of dunes that were  
22 heading inland, so we wanted to slow those down. Some of the dunes that were moving  
23 into the Oso Flaco Lake area. So we've been revegetating.

24 The one slide that was up earlier that showed the difference from the 1930s to now, if you

1 take net change from those 1930 photos to current photos, there's a net increase of right  
2 around 100 acres. I don't have the exact figure. Some of the foredune stuff is not as  
3 prevalent. There's a lot more vegetation. If you go back and look at those photos in  
4 your packets, there's a lot more vegetation around Oso Flaco. Because for years when I  
5 was in college and working out in the dunes, we were concerned about sand movement  
6 into Oso Flaco Lake.

7 So what we will be doing working on a reduction plan, which we are committed to working  
8 on -- and I might add, we're committed to working on it by that schedule that was proposed  
9 in the rule. We just don't feel that somebody needs to force us to do it. That's what  
10 we're going to be doing anyway. We can take those efforts that we're currently doing and  
11 then use those to best effect. Put them in the right places, use them to best effect.

12 There are just a couple of questions or a couple of issues about some of the technical stuff  
13 that I wanted Tom -- if you would, Tom Reed?

14 **UNIDENTIFIED SPEAKER:** Mr. Reed?

15 **UNIDENTIFIED SPEAKER:** Right behind you.

16 **MR. TOM REED:** Sure. Thank you, Mr. Jenkins.

17 **MR. MR. PHIL JENKINS:** And then I'll have --

18 **CHAIRPERSON GIBSON:** Okay.

19 **MR. MR. PHIL JENKINS:** After Tom, I'll have a very brief rap.

20 **CHAIRPERSON GIBSON:** Okay. Sounds good.

21 **MR. TOM REED:** I'll be brief. My name is Tom Reed. I'm a consultant of Parks.

22 The handout here has an excerpt from the Memorandum of Agreement, which describes  
23 the contents of the Particulate Matter Reduction Plan, or PMRP. And it has a technical  
24 response to some of the factual issues in the staff report prepared by my group and by CGS.



1 We're putting that in for the record, because we need to keep the record complete. I will  
2 not address it now. Frankly, while the technical issues are germane, these are things  
3 which I believe really would be best resolved by technical staff working through. They are  
4 not science issues, so much as interpretation of science. There are some fairly complex  
5 phenomenon in the dunes. I think it's easier for us if we can try to do -- get a lot of that  
6 worked out through the process of developing a PMRP, which will come back to the Board.  
7 But we don't want to argue it in front of the Board today.  
8 I think that it's a temptation to look for easy answers. These dunes are a very complex  
9 phenomenon, and there really are no easy answers. I think that Mr. Allen said that there  
10 are consistent findings. And we believe that those are not fully supported by the full  
11 science that's available today. But I think we need to move on.  
12 There is dust downwind. We acknowledge the PM problem. And as Phil states, Parks is  
13 committed to trying to reduce emissions. It's preparing to prepare and implement a  
14 Particulate Matter Reduction Plan. That plan and Parks shares the goal expressed by  
15 APCD staff, which is to reduce particulate matter emissions from the dune sheet to natural  
16 levels or levels from natural sources as best as can be done.  
17 Parks is proceeding. It got a lot of work done last year. It provided the majority of the  
18 funding for the DRI study. It's contributing funding to your current Community  
19 Monitoring Program. The DRI study taught us a lot about some of the tools. Some of the  
20 best management practices that Gary Willey described will go into the PMRP. And I think  
21 as the handout shows, the PMRP itself will be fairly comprehensive. It will include  
22 appropriate monitoring. It will include appropriate performance measures for what will  
23 be done. Essentially, it will be an enforceable document, an enforceable plan.  
24 Our comments on the current rule and the current reliance on comparative regional

1 monitoring simply go to the point that we believe that it's unnecessary to put that in a rule  
2 now, because that will be addressed in its entirety in the Particulate Matter Reduction Plan  
3 that will come back to you as a complete package, action, and performance measures.  
4 That is our technical point that I'd like to make today.

5 We're available for questions, but we don't want to go further.

6 **CHAIRPERSON GIBSON:** All right. Thank you, Mr. Reed.

7 Let me have Mr. Jenkins sum, and we'll have a thought here.

8 **MR. MR. PHIL JENKINS:** So just in summary, what we're saying is we continue to have  
9 serious concerns about the rule, the way it's drafted currently. But we don't want that to  
10 confuse the issue that we remain committed to trying to address this problem. We've  
11 demonstrated through our actions and our investment in funds and staff and time on the  
12 sand trying to make things better, trying to stabilize sand movement, that we're there.  
13 We're bringing the resources. We're bringing the goods. We just need to work with  
14 APCD and develop a PMRP that can focus our efforts. We have an outline for that that  
15 was agreed to by all the three parties of the MOU that gave a blueprint for what a PMRP  
16 might look like. So we've got a great starting point.

17 And finally, I would just encourage you to error on the side of what's going to be the most  
18 productive thing for moving forward. The most productive thing for moving forward right  
19 now is to support the continuing work of the PMRP and the actions on the dunes. For  
20 instance, we recently asked for five wind towers. We asked for a permit for five wind  
21 towers out on the dunes. That's been appealed. It's pending at the California Coastal  
22 Commission. We need support in getting that through. If we had put those five towers  
23 up when we had purchased them -- they're sitting on the shelf. We're dying to get them  
24 up and get a better map of what's going on with the wind out in the dunes. Because of all

1 the angst about why are they doing it and maybe they're doing it to try to prove something  
2 else, because of all that, they're sitting there on appeal. If we had that information in our  
3 pocket right now, we would be much further along on developing a PMRP. We would  
4 have more data that's directly applicable to deciding where do we put in the next  
5 vegetation project.

6 So we ask for your support as we move forward. We would ask you not to approve this  
7 rule. And we will look forward to continuing to work to solve this problem.

8 **CHAIRPERSON GIBSON:** Thank you, Mr. Jenkins.

9 Yeah. If we have specific questions for Mr. Jenkins, let's take them now. My thought  
10 then is to declare a short break while staff organizes its notes, and we'll get back to  
11 deliberations.

12 But Mr. Hill?

13 **DIRECTOR HILL:** Yes. Thank you, Mr. Chair. I do have -- if Mr. Jenkins would be so  
14 kind.

15 Well aware of your objections, both to some of the technical issues in the Phase 2 study  
16 and also in the rule. So I guess if I could get a direct answer from you without referring to  
17 that.

18 Are you of the mind that passage of this rule is going to close the recreation area? Yes or  
19 no?

20 **MR. MR. PHIL JENKINS:** No, I'm not.

21 **DIRECTOR HILL:** Okay. Do you think that the APCD has an interest in closing, or even the  
22 power to close the recreation area?

23 **MR. MR. PHIL JENKINS:** I believe that Larry has commented many times that that is not  
24 his goal. And I take him at his word.

1 **DIRECTOR HILL:** Okay. Have any other areas, including our area in our county -- but  
2 OHV areas that are under your management, have they come under any regulation from  
3 local authorities, whether they be air boards or others?

4 **MR. MR. PHIL JENKINS:** I don't think they're under current regulation. There are some  
5 issues at a couple of other SVRA's where we are working with the local air pollution control  
6 districts. But I'm not aware as I stand here that any regulations were passed that directly  
7 apply to us.

8 **DIRECTOR HILL:** So as you stated, that no matter what, you're seeking to address the PM  
9 problem that occurs out in the dunes area?

10 **MR. MR. PHIL JENKINS:** Correct. In accordance with our strategic plan, we have to.

11 **DIRECTOR HILL:** Okay. So what harm would passage of this rule do to this collaborative  
12 effort to reduce potentially harmful PM pollution?

13 **MR. MR. PHIL JENKINS:** Right. And so to answer that, you would really need to look  
14 back at our full letter. And if you -- in your package, I notice that you have two of our  
15 letters. You have both the letter that I supplied at your last meeting, which I was only able  
16 to get to you the day of the meeting because I just finished writing it the night before. So  
17 my apologies for the late delivery on that one. And our current letter, which you have to  
18 go back to page 89 to find.

19 There are several issues that are outlined in a letter, some of which have been addressed  
20 with modifications to the rule, some of which has not. And that's the problem, is the  
21 requirement to get an operating permit, the way that the comparative monitoring of a  
22 control site and another site and the science that's behind those still, for us, is a concern.  
23 Our fear is that despite our best efforts -- because this will be a trial-and-error process as  
24 we move forward, as has been stated by staff. They don't know what to tell us what to

1 do, because nobody knows what to do. We're going to try to figure it out together. As  
2 we try to figure it out together, if we together fail, then we need to redo our plan and start  
3 again. The rule sets the situation where if we together, after agreeing on a plan of  
4 action -- I think it'll work, you guys think it'll work. All right, so we'll do it. And then if it  
5 fails, we get fined. That's not a 50/50 partner -- that's not moving forward. It dampens  
6 the ability to be creative and try to find the best solutions.

7 **DIRECTOR HILL:** But you did hear Mr. Allen and Mr. Willey's presentation that that's not  
8 how they intend to go about if this rule passes in working with you, nor is it how they go  
9 about with any other rule that they pass.

10 **MR. MR. PHIL JENKINS:** Well, if they don't intend to apply fines, then you wouldn't need  
11 a rule.

12 **DIRECTOR HILL:** It's not that they don't -- they intend to work with you to avoid having to  
13 apply fines.

14 **MR. MR. PHIL JENKINS:** Well, that's what we want to do. We want to work together.  
15 But having those comparative winds things, those two locations, we don't feel is going to  
16 accurately reflect the advances that can be made and the improvements that can be made.  
17 It's not so much that we object to the rule. It's just the methodology that's used.

18 **DIRECTOR HILL:** One more quick question --

19 **MR. MR. PHIL JENKINS:** Sure.

20 **DIRECTOR HILL:** -- I know others have.

21 Is Mr. LaFrank [*phonetic*] still the counsel for your division?

22 **MR. MR. PHIL JENKINS:** He is hired right now just as a consultant for our division.

23 **DIRECTOR HILL:** Has he briefed you on possible exposure to litigation that your agency  
24 might face were you not to -- were you to be successful in getting this rule killed? Have

1 you been briefed on that?

2 **MR. MR. PHIL JENKINS:** We have talked to our department legal counsel about this entire  
3 situation at length.

4 **DIRECTOR HILL:** The Department of Natural Resources counsel?

5 **MR. MR. PHIL JENKINS:** No, no. State Parks has their counsel.

6 **DIRECTOR HILL:** Right.

7 **MR. PHIL JENKINS:** Mr. LaFrank is not currently counsel for the Department. He is a  
8 consultant with us. We have a department chief counsel. And they have a staff, and we  
9 work with those staff.

10 **DIRECTOR HILL:** And they have briefed you on these matters and possible exposure to  
11 litigation?

12 **MR. PHIL JENKINS:** Yeah. For all actions that we take, we, of course, look at risk factors.

13 **DIRECTOR HILL:** Okay. Thank you, sir.

14 **CHAIRPERSON GIBSON:** Thank you, Mr. Hill. Actually, I'm going to -- can I just  
15 quickly -- I'm going to ask quickly --

16 **UNIDENTIFIED SPEAKER:** Okay.

17 **CHAIRPERSON GIBSON:** -- can you get any kind of an idea on a timeframe on here?  
18 Because I'm going to have to rearrange --

19 (Simultaneously speaking.)

20 **CHAIRPERSON GIBSON:** -- I think that we probably -- it sounds to me like we have five to  
21 ten more minutes. I would think we're probably going to reconvene around 1:00.

22 **UNIDENTIFIED SPEAKER:** (Unintelligible.)

23 **CHAIRPERSON GIBSON:** I expect about an hour, at least, of deliberations. I hope folk  
24 cans stay until between 2:00 and 3:00. I think that's what it's going to take.

1 **UNIDENTIFIED SPEAKER:** You're going to take how long of a break?

2 **CHAIRPERSON GIBSON:** Well, I assume that -- unless the commission -- unless the District  
3 wants to break for lunch, I'm going to consider that we're going to plow on through. I'm  
4 talking about a 10-minute break. We could go 15. There's a very nice cafe down at the  
5 end of the lobby. If you want to stretch it a little bit longer for folks to bring things back to  
6 the dais -- I think maybe that's what we'll do. We'll break long enough to get lunch locally  
7 and bring it back.

8 With that, I have Mr. Patterson, followed by Mr. Waage. And we'll come back this way on  
9 the dais.

10 **DIRECTOR PATTERSON:** Yes. Mr. Jenkins, I'm curious, what is your anticipated  
11 timeframe for developing a Particulate Matter Reduction Plan?

12 **MR. PHIL JENKINS:** Assuming that we all still agree, as we did during the MOU process, on  
13 that blueprint for developing a plan, we would be hopeful that we can follow -- whether or  
14 not there's a rule -- that we can follow that timeline that's been laid out. That certainly is  
15 our goal. That's our desire. The only thing that might hold that up is if some other  
16 process gets in the way. We're moving forward on that. We all have agreement on the  
17 blueprint. I don't see any cause for delay.

18 **DIRECTOR PATTERSON:** You spoke to concerns about budgeting. Is that going to be an  
19 impediment to moving forward with this?

20 **MR. PHIL JENKINS:** The -- as we're all aware, the State budget right now is a very volatile  
21 situation. That's why I was wanting to be clear that we currently within our operational  
22 budget have quite a bit that we can do within our operational budget. Going right now to  
23 the State or any agency or any project and asking for additional funding is not a sure thing.  
24 But we certainly would be trying.

1 **DIRECTOR PATTERSON:** Well, you did speak to the advantage of having that plan  
2 directing where you actually do your applications of revegetation and other things. So it  
3 would be to your advantage to do that, I would assume, as soon as possible?

4 **MR. PHIL JENKINS:** Correct. Whenever we ask for a budget change proposal to increase  
5 our budget, the very first question the Department of Finance asks is where is this in your  
6 strategic plan? And it's in the first goal of the plan.

7 **DIRECTOR PATTERSON:** Okay. And again, your concern -- following up with Mr. Hill's  
8 question.

9 I was curious also about how the adoption of the rule would prevent you from moving  
10 forward with the development of the plan and implementation of measures. Again, what  
11 is the impediment there?

12 **MR. PHIL JENKINS:** If I were going to try to summarize -- because I know we've gone  
13 through all of it many times. But if I were going to try to summarize, it's that we don't feel  
14 that the plan as it's currently drafted would judge us fairly on our level of success.

15 **DIRECTOR PATTERSON:** Okay.

16 **CHAIRPERSON GIBSON:** Mr. Waage?

17 **DIRECTOR WAAGE:** Thank you, Mr. Chairman.

18 You mentioned that you didn't think there'd be any -- there's no -- there's no effort to try to  
19 shut the park down through this -- through this effort.

20 The question, though, is do you see that there could be some operating constraints if this  
21 rule passed as is? For example, in the springtime, you have high winds. Right now, the  
22 District is forecasting when they expect high particulate. And if the District believes that,  
23 in fact, it's the crust that's being disturbed during the operation of the park, that if you  
24 perhaps shut down the park in advance of high wind episodes forecasted, that this would



1 somehow be a good thing. Would you see that there could be some operating  
2 constraints, that there'd be periods of time where you might have to shut down if this rule  
3 goes through as is?

4 **MR. PHIL JENKINS:** That's kind of looking far down the road, so I'm not certain. But I'm  
5 glad you brought up the general topic, because one of our other concerns with the rule is  
6 that right now if we were to propose a PMRP and we can't get complete agreement with  
7 the APCD, then we would be told no, it's not approved, and we don't have an approved  
8 plan. And so we have to go back and back for iterations.

9 As long as we're still not in 100 percent agreement on the cause of the problem -- is there a  
10 crust, is there not a crust where the vehicle is disturbing it -- that could cause conflict in  
11 how we address the problem. If we're looking at doing extensive revegetation in our  
12 buffer zone, you know, is that going to make -- you know, meet the bar or the standard of  
13 yes, you're addressing the area where the crust is being disturbed? We don't know how  
14 that's going to look down the road.

15 Our goal is a net decrease in PM10 coming off the entire dune sheet, both the riding area  
16 and the buffer zone. We're looking for that net decrease in all of it.

17 Another one of our problems with the rule is it seems to point only at a small section of the  
18 dunes, like solve the problem there in that small footprint. We think we need to be  
19 looking at the entire canvas of sand as we address problems.

20 **DIRECTOR WAAGE:** I guess just to try to summarize then, it sounds like you don't know if  
21 there would be any operating constraints or not at this point? There could be, there may  
22 not be, but it's possible?

23 **MR. PHIL JENKINS:** That's our concern about an operating permit, is an operating permit  
24 could potentially put constraints on us. We don't feel that's appropriate.

1 **DIRECTOR WAAGE:** Thank you.

2 **CHAIRPERSON GIBSON:** Okay. Thank you, Mr. Waage.

3 Seeing no other questions for Mr. Jenkins, we'll thank you, sir.

4 We'll close the public comment. And I would propose with colleagues' consent that we

5 plan to reconvene at 1:00. Food on the dais is perfect -- well, food being on consumed on

6 the dais is perfectly acceptable to me. There is the cafe down at the end of the hall.

7 We'll let staff organize that --

8 (Simultaneously speaking.)

9 **CHAIRPERSON GIBSON:** -- so we'll be back at 1:00.

10 APCD STAFF: Microphones are live. You are back (unintelligible.)

11 **CHAIRPERSON GIBSON:** Thank you.

12 (Simultaneously speaking.)

13 **CHAIRPERSON GIBSON:** Ladies and gentlemen, let us -- let us come together to

14 reconvene. We do have a quorum. More importantly, we have a clerk back on the dais.

15 That's the necessary component of that.

16 So as we get it back together here, I would turn it back over to Mr. Allen and/or Mr. Biering

17 if they feel there are any matters that came up during public comment that they want to

18 respond to specifically.

19 **MR. ALLEN:** Thank you, Mr. Chair.

20 I wasn't entirely sure how to go about this. There were a lot of comments made. I have

21 a lot of notes. I didn't hear anything significantly new this morning that we haven't

22 already addressed in our responses to the comments in the staff report. Mr. Waage's

23 presentation didn't invalidate any of the conclusions of our study in my mind. We have

24 looked at all of the issues that he has raised already. If the Board wanted me to, I could go

1 through and specifically address each one. But I think that's in your staff report, as well.  
2 I think that the important -- the most important thing to point out is that people are trying  
3 to attack the science behind the study, looking at very specific points in the study, and are  
4 actually going at it with a conclusion that they want to find and looking through the data to  
5 try and find data that will show that conclusion. That is pretty evident in everything that  
6 we have seen. That is not what APCD did in conducting this study. We conducted an  
7 objective study. We hired experts and collected an incredible amount of data. And  
8 based on that weight of evidence and going through and reanalyzing everything through all  
9 the comments. And many people have mentioned the 200-page staff report that you  
10 have. We did a lot of work in that and did not find anything of significance in there that  
11 would make us challenge the validity -- overall validity of the findings. Sure, does our  
12 study have limitations? Yes. It's a scientific study, and all scientific studies have  
13 limitations. Sure, if we had it to do over again, would we put wind monitors down in the  
14 dunes themselves? Sure, we would do that. But the fact that we didn't doesn't  
15 invalidate the conclusions. There are many other offsetting factors that I could go through  
16 point by point to show that that comparison is still valid.  
17 And so I think that -- and if the Board wants me to, I will go through that exercise with you.  
18 But I think that's up to the pleasure of the Board. So I would leave that to you.  
19 I think there was a letter presented to you from a UCLA professor. Dr. Borenstein  
20 provided it to me. I just saw this morning. She asked me to be her proxy in relaying her  
21 comment. She apologized. She's at the Diablo Canyon Emergency Response exercise  
22 this morning and is required to be there. But she said that this particular individual is  
23 clearly an outlier from all of the studies that have been done to date.  
24 Dr. Borenstein has reviewed an incredible amount of literature on this. She's been in very

1 close conversations with Dr. Melanie Marty *[phonetic]*, Dr. Brian Malik *[phonetic]*, from the  
2 California Office of Environmental Health Hazard Assessment, who is the scientific body  
3 charged with reviewing the evidence, the medical evidence, needed to set the air quality  
4 standards for the State of California. And so -- and they have provided all sorts of  
5 information and references to the literature showing yes, indeed, there are significant  
6 health effects from PM10, including several new studies that have come out showing some  
7 fairly significant adverse health effect associations with PM10. And so she wanted me to  
8 relay that to you.

9 I think on the rule, the comments on the rule itself from State Parks in particular, I do  
10 believe that we can work cooperatively and collaboratively with them to implement a  
11 feasible and reasonable regulation, which we believe we have proposed. We do believe  
12 that the comparative monitoring is necessary for us to truly determine how effective the  
13 strategies are and what differences we're seeing between natural background and the  
14 emissions from the riding area. And so we will work very closely with them as we set up  
15 that monitoring to make sure that we all agree that it's going to be representative of that  
16 and is only measuring the areas it's intended to measure.

17 **CHAIRPERSON GIBSON:** And just for clarity, if I might, Mr. Allen.

18 In terms of developing a process of monitoring and in developing a Particulate Matter  
19 Reduction Plan, those are all included in the rule. That is part of the rule, is to get those  
20 things done.

21 **MR. ALLEN:** Correct.

22 **CHAIRPERSON GIBSON:** That, in fact, there is no violation of this rule in terms of the  
23 amount of dust in the air until such time as the PRMP is in place and has been given a  
24 chance to work. Is that a proper understanding of it?

1 **MR. ALLEN:** That is correct.

2 **CHAIRPERSON GIBSON:** Okay.

3 **MR. ALLEN:** So, you know, it has out until -- I believe that they have to begin -- I don't  
4 have the rule in front of me. Well, I could look it up. But if you look at the compliance  
5 milestones, they have at least 18 months after every -- they've gotten their permits and  
6 their plan's been approved. It's actually almost two years --

7 **CHAIRPERSON GIBSON:** Right.

8 **MR. ALLEN:** -- before that section would apply.

9 **CHAIRPERSON GIBSON:** Those compliance milestones are part of the rule, with the  
10 flexibility and the exceptions that have been built in and that you have added, and that I did  
11 think we heard State Parks indicate that they believe they can meet the timeline on  
12 developing the PMRP. We certainly understand the permitting process. But there's  
13 specific languages to that effect.

14 **MR. ALLEN:** Yes. And, you know, we will work with them to help them meet those  
15 deadlines. We will work with the agencies that they have to interact with to try and  
16 impress upon them the urgency of this and that expeditious review is needed. And we'll  
17 do whatever we can to assist them in moving through that process as staff. And if we  
18 determine that it's clear that regulatory delays that are outside their control are causing  
19 delays, then we'll work to reset those compliance milestones on something that looks  
20 reasonable. And we have -- we actually have a process in place to do that and all that,  
21 which is our hearing board, which is you can -- hopefully, we'll see that enough in advance  
22 that we can ask them to go to the hearing board and apply for a variance. And when you  
23 do that, the hearing board actually sits down and looks at all the evidence in front of them  
24 and says, okay, we think you're go to need another six months to comply with this, let's set

1 a new date. So that's sort of the official way that the Air District typically rules. It's not  
2 just if -- if State Parks is not happy with our decision, they can go to the hearing board and  
3 say we think your staff needs to give us more time.

4 **CHAIRPERSON GIBSON:** Okay. Actually, Mr. Hill. And then Mr. Guthrie might have  
5 some questions specific to that. And then --

6 **DIRECTOR HILL:** Just --

7 **CHAIRPERSON GIBSON:** -- we'll come back.

8 **DIRECTOR HILL:** -- a quick question for Larry. Or actually, two. I wanted to ask the  
9 same questions I asked Mr. Jenkins. And I appreciate his direct and candid replies. And  
10 he did it in a yes or no fashion.

11 Do you think that the passage of this rule is going to close the recreation area?

12 **MR. ALLEN:** No.

13 **DIRECTOR HILL:** Do you think any of the actions of the APCD or any of the people involved  
14 in creating the studies or any of the reviewers has any desire to close the recreation area?

15 **MR. ALLEN:** No.

16 **DIRECTOR HILL:** Okay.

17 **CHAIRPERSON GIBSON:** Mr. Guthrie, then Ms. Marx and Mr. Martin.

18 **DIRECTOR GUTHRIE:** Okay. Yeah. I had -- on the compliance schedule. Because I  
19 think that the Parks' number one concern is with this control site, the control site  
20 monitoring. The very first thing they have to do is put together this part of the plan,  
21 which is actually by February of next year.

22 **MR. ALLEN:** Right.

23 **DIRECTOR GUTHRIE:** February 28th. So that's actually a very short term that they have  
24 to come up with the site, which is the primary part of their --

1 (Simultaneously speaking.).

2 **MR. ALLEN:** Actually, that does not require them to come up with the site. It actually  
3 requires them to come up with a plan on how they're going to select a site. And so that  
4 means identifying all the criteria that will be used in selecting sites, the process that they'll  
5 use in going out and looking at different areas to try to determine what's an appropriate  
6 control site, what's an appropriate downwind riding area site, and so forth. So it's really  
7 the plan requirement, not the requirement to say here's the sites we're selecting.

8 **DIRECTOR GUTHRIE:** Okay. So by February 28th, we would know if this was going to be  
9 a deal killer?

10 **MR. ALLEN:** Yeah. I mean -- really, we're going to sit down with them as soon as  
11 possible to start talking about how the elements of that plan would be constructed and  
12 what -- you know, some criteria that we can all agree on that would be necessary. And  
13 hopefully, you know, pick a third party we can agree on to help go out there and select  
14 these sites.

15 **DIRECTOR GUTHRIE:** Okay. Thank you.

16 **CHAIRPERSON GIBSON:** Ms. Marx, then Mr. Waage. And then back (unintelligible).

17 **DIRECTOR MARX:** Yes. First of all, I wanted to say that during break, staff directed my  
18 attention to Exhibit A, which is the -- on page B1219, which is the rule, which is an  
19 attachment to our resolution. And the numbering there is accurate. So that's what we  
20 would be looking at, not the exhibit that I was reading earlier.

21 I had a question for Mr. Biering. We've had a number of people tell us today what our job  
22 is and what we need to do. We need to protect the economy, we need to make sure that  
23 health is protected. And I think it might be helpful to the Board if you could just go over  
24 with us briefly what our role and duty is as we face this decision today as the Air Pollution

1 Control District Board. Not necessarily people who represent various regions, but as a  
2 board.

3 **COUNSEL RAY BIERING:** I think I can address that. California law requires the District to  
4 plan for and attain Federal and State ambient air quality standards in our basin. And the  
5 District's primary role or duty in that is to control air pollution from every source other than  
6 vehicular emissions. And the law pretty clearly gives this board a mandate to adopt rules  
7 to accomplish that. That's very clear in the statute.

8 As members on this board, you're not here to represent any particular interest or even a  
9 particular political subdivision. Your goal really is to look at all these issues, to  
10 look -- whether it's a rule or whatever -- on a regional basis, on the basis of the entire air  
11 basin, and to exercise your powers to the best you can protect public health and safety,  
12 particularly in the context of air pollution. That's our main charge.

13 And so I guess the bottom line is I guess what I'm saying is you need to think past your own  
14 constituents and look at the constituents of the county as a whole and air pollution  
15 specifically in that role.

16 Does that answer the question?

17 **DIRECTOR MARX:** Yes.

18 **COUNSEL RAY BIERING:** Thank you.

19 **CHAIRPERSON GIBSON:** Thank you.

20 Mr. Waage?

21 **DIRECTOR WAAGE:** Thank you, Mr. Chairman.

22 It sounds like the staff is reluctant to address some of the new issues that I raised based  
23 upon the following: At our City Council meeting about a week ago, I pointed out the  
24 problems in the high 50 days, low 50 days. And subsequently to that, Mr. Allen asked how



1 I did it. I explained how I did it in the spreadsheet. And then they changed what they  
2 were -- the method of doing it said, well, we don't need the control Oso, we'll just go ahead  
3 and use the data without the control.

4 As I pointed out today, this does put in seasonal variables. You're going to expect to have  
5 more particulate in the summertime than the wintertime. And the staff has not  
6 addressed this particular issue.

7 Same thing with the wind speed. If Parks has documentation that they objected in 2007  
8 to using CDF as a location for measuring wind speeds on the dunes and subsequently, we  
9 find out the wind speeds are much higher on the dunes and yet, nothing's been done about  
10 it in addressing it, then it seems to me we have a serious problem in moving forward,  
11 unless we do try to address these various issues.

12 In particular, if I could just get feedback from the staff, do you agree that there's no -- that  
13 there are seasonal differences, summer versus winter on particulate?

14 **MR. ALLEN:** First of all, let me clarify. I am not reluctant to address the criticisms that  
15 you've made. I just want to know if the Board wanted me to or not. And I will at this  
16 time.

17 Certainly, there's always seasonal differences that you find. In any type of pollution when  
18 you have rain events, you're going to find that you get less dust. When you have higher  
19 temperatures, you're going to find that it dries out more quickly.

20 The whole issue with looking at the activity data and comparing it to the concentrations  
21 that we measure out there is kind of a sideline here to the whole study. I think if  
22 you -- anyone that would look back into the report would see that we have always said that  
23 the direct impact of the vehicles themselves and the plumes that they throw up into the air  
24 and having those blow up into the Mesa is quite small, compared to the indirect impact of

1 them causing a rather large disturbance in that whole area of the SVRA and when we get  
2 high winds, that disturbance enables the surface of the sand sheet to lift up into the air.  
3 And you saw from one of the plume photos that it's clear that there's a very large plume of  
4 dust that comes off of that sand sheet.  
5 You know, the presence or absence of a crust is one possible explanation of it. We didn't  
6 never claim that that was the sole reason for that. But you -- you know, when we went  
7 out with DRI and performed -- and walked around, did a tour of the dunes to look at  
8 different areas that could be tested, when we walked into the non-riding area, everybody in  
9 that whole group, including State Parks, commented on the difference in the structure of  
10 the sand. It was hard. In fact, one of our staff picked up -- broke a piece of it off and  
11 held it in his hand as a solid piece and walked over to one of the State Parks staff and said,  
12 this is what we're talking about.

13 **DIRECTOR WAAGE:** Mr. Chairman, he's answering a question I did not ask.

14 **MR. ALLEN:** Well, I'm just trying to make a comment here, Mr. Waage. I'm sorry.  
15 But coming back to the vehicle activity data, my point being that that is a minor portion of  
16 the impact that we see out there. That is meant to look at the direct impacts. And the  
17 study -- what we looked at, the minor error that we made in there, was counting up 50  
18 rows of data rather than 51 and dividing by 50. Having the Oso data in there is not  
19 significant, and there was no need to have put it in there in the first place, because there is  
20 no vehicle activity upwind of Oso. And so you would never expect to see a relationship  
21 there.

22 And so looking at -- and if you look at the analysis that you, yourself, have done since,  
23 weekend versus weekdays, you don't have any control site data there, because it's not  
24 there. But you still want to try and make the point that there's a difference.

1 TRA also looked at a year and a half worth of data after the study. And their data actually  
2 showed a difference between the high 25 percent versus the low 25 percent. It just  
3 wasn't statistic -- it didn't meet the statistically-significant marker of 95 percent confidence.  
4 It was at an 88 percent confidence limit.

5 So the point being is that that relationship is not the strongest relationship there, and that's  
6 not the main factor. The main factor is the disturbance of the soil out there and its ability  
7 to emit more because of that disturbance. And there is lots of data in the literature out  
8 there done by many other researchers and many other studies that acknowledge that  
9 point. In fact, the algorithms to calculate particulate emissions always include a question  
10 as to whether or not the soil is disturbed. And if you check the box that says the soil has  
11 been disturbed, it increases the emission rate.

12 **CHAIRPERSON GIBSON:** Any other points, Mr. Waage?

13 **DIRECTOR WAAGE:** I guess my point was you never really answered the question about  
14 seasonal variation.

15 **CHAIRPERSON GIBSON:** I do believe he did say there were seasonal variations,  
16 Mr. Waage. And he gave you an explanation, quite extensive one.

17 **MR. ALLEN:** I think that we had an entire year's worth of data. Actually, 13 months, as  
18 you pointed out, that should have captured any seasonal variation within that.

19 **CHAIRPERSON GIBSON:** So Mr. Waage, other points?

20 **DIRECTOR WAAGE:** Well, I disagree.

21 I guess the other point, again, was the wind speeds. And you keep saying that the -- the  
22 threshold wind speeds, even to this board today, are accurate in a sense that the wind  
23 speeds which were measured at CDF, you're assuming are still valid. Yet in your report,  
24 you said that if we had -- if we could do it over again, we would want to get wind speed

1 measurements on the dunes.

2 So I guess one part of the study has to do with threshold wind speeds. If the wind speed

3 measurements are not accurate then, in fact, that whole portion is called into question.

4 And I wanted to make it clear whether or not you think that's the case or not.

5 **MR. ALLEN:** Well, actually, I think you mischaracterized my statements a little bit. But

6 let me --

7 Can I have the overhead, please?

8 In your analysis and the -- the copies of your analysis that Friends of the Dunes projected up

9 there, you make a point of looking at the -- well, just let me start with this.

10 First of all, if you look at the relationship, what all these are are these yellow dots

11 (indicating) are where sand flux measurements were taken. These two red dots

12 (indicating) represent -- and this is actually Mesa2 over here (indicating). This one I didn't

13 put a dot over there. This is CDF (indicating). This is Oso (indicating). This is the State

14 Parks S1 tower (indicating). That tower is located just barely a quarter mile inland, and it

15 does sit on a flat piece of beach out there. There is -- it is measuring winds directly off the

16 ocean. It is not measuring winds in the dunes itself. It's measuring winds directly off the

17 ocean at their peak speeds before they have encountered the surface friction that occurs as

18 the winds move over land and before they have encountered any terrain that would alter

19 and slow the winds, as well. And so you are measuring a peak wind there.

20 Now, CDF is inland. And certainly, you're going to see that there's going to be a difference

21 between those two. But to say that this location is more representative than this location

22 and should be used, if you look at the scattering of where these monitors are, these are all

23 in terrain in the dunes themselves. The closest monitors were a half a mile, not a quarter

24 mile away. And the furthest inland ones were over a mile, like almost a mile and a quarter

1 or so inland, even closer to CDF than they are to S1.

2 Now, there's going to be changes in the wind speeds that occur over that distance. But

3 now you have to take a look at where the control site was located. Okay. So you've seen

4 that distance. You say, yeah, that's pretty far away. Okay. Winds are going to be

5 slower there than -- probably -- than what we measured than what was actually occurring

6 when we collected the sand here.

7 Take a look at the Oso site. That site is fully a mile and a half away from the shoreline. It

8 is located in complex terrain at an elevation that is lower than where the sand flux data was

9 collected. And so the winds there are certainly going to have the same relationship to

10 where the sand flux was collected. The closest sand flux measurement was a half a mile

11 away, but at the furthest away it was a mile. And so the same type of reduction and wind

12 speed relationship that occurs out the CDF is going to occur at Oso.

13 Just to give you a visual, here is the S1 site (indicating). You can see how close it is to the

14 water right here (indicating), to the shoreline. This is the Oso site right here (indicating)

15 measuring. There's the ocean, way out there (indicating). And you actually have

16 to -- this is a little ridgeline right here (indicating). If you walk down that ridgeline and

17 look up, this is where the first sand flux collection was measured. And it was at the

18 highest point on a dune. There was no other comparable sand collection site in the SVRA.

19 This is a totally exposed site. Nothing to obstruct the wind flow or to obstruct sand

20 coming up there.

21 So then if you look at okay, how do these wind measurements compare to each other?

22 This is -- I asked Joel to look at this. He prepared a scatter plot of the relationship

23 between that S1 site and Mesa2. Okay? And you can see clearly there's no relationship.

24 They're measuring two different wind patterns. When you look at Oso, it lines up quite

1 closely with how the Mesa2 winds flow, indicating that it's measuring winds more indicative  
2 of an inland site than a dunes site.

3 And so when you look at all of those differences, clearly what it tells us is says number one,  
4 there are differences in both sites. And neither one invalidates the findings. They just  
5 put a limitation on how strong the conclusion of that piece of the study can be, that one  
6 piece of the study. But there's much data out in the literature that supports the findings  
7 that we had here, that show that sand moves in a disturbed area at a higher rate than it  
8 does in an undisturbed area.

9 And, in fact, the DRI study, even though there was high variability in their data, also  
10 supported that. They showed at higher wind speeds, they showed higher sand movement  
11 in the riding area versus the non-riding area.

12 **CHAIRPERSON GIBSON:** And at that point, let me ask Mr. Waage, any other points you  
13 wish a response to? We have Ms. Fonzi and then Mr. Mecham.

14 **DIRECTOR WAAGE:** That's all for now, Mr. Chairman.

15 **CHAIRPERSON GIBSON:** Okay. Ms. Fonzi?

16 **DIRECTOR FONZI:** Thank you. I'd like to rise up out of the details of the study and look  
17 at something a little more broad, if we could.

18 The State Parks and our study both support and state that we have a problem with  
19 particulate matter, but the approach seems to be a little bit different. Your approach  
20 when you made the recommendation was that we have a rule in place. The rule itself, I'm  
21 not sure that I understand where you're going with this. Because you say that it will be  
22 subjectively in my mind enforced; that you'll be working with State Parks, and sometimes  
23 you'll enforce it and other times you won't. I'm a little uncomfortable with that. And I'd  
24 like to get some explanation why the rule might be the best approach, instead of a best

1 management practice in reaching the goal that we seem to share.

2 **MR. ALLEN:** Sure. Well, I guess "subjective" is a -- is a broad term. And we do use a lot  
3 of different criteria when we look at how we gauge compliance with our rules and  
4 regulations. We don't just look and say, well, I think you're out of compliance and  
5 therefore, we're going to fine you for this. We look at a number of different factors. We  
6 work very closely with all of our regulated entities to try to understand, number one, why  
7 the particular problem was created that resulted in a violation of the regulation and what  
8 they did to -- you know, how quickly did they move to correct their action, how effective  
9 was their correction. You know, did they report the incident to us themselves, or did we  
10 discover it somehow. It's -- again, so there's a number of -- and how many violations  
11 they've had in the past. So there's a number of criteria we look at. It's not really  
12 subjective. We do look at a number of different things. And the Health and Safety Code  
13 lays out a number of things for us, as well.

14 From the standpoint of a rule versus a handshake, the mandate of the Air Pollution Control  
15 District is to ensure the protection of public health and to ensure that it occurs in a timely  
16 manner if, in fact, it's not happening right now. And rules and regulations are the method  
17 that we operate in, because it provides a measure of control over whether or not  
18 requirements get met. If you don't have something that lays out what the requirements  
19 are and timelines for meeting them, then it becomes a disagreement between two entities  
20 saying, well, I think I've done enough and I don't -- I think this timeframe is unreasonable,  
21 and sue me.

22 And so I think that we have demonstrated, and Mr. Jenkins has demonstrated, that we have  
23 already established a very good working relationship with them. And we've been working  
24 collaboratively with them and their staff. There's a level of trust that has been established

1 there. This regulation is not going to change that. It just provides us a structure and a  
2 timeframe for moving forward.

3 **DIRECTOR FONZI:** But what I'm hearing from Mr. Jenkins is there's a certain uncertainty,  
4 if you will, that he is not sure how to get where he needs to go to meet the qualifications of  
5 this rule. How are you going to be able to enforce the rule if you don't have something in  
6 place that he can follow?

7 **MR. ALLEN:** Well, the Particulate Matter Reduction Plan is going to be what gets put in  
8 place that he can follow. And that's going to have specific timelines within it. It's going  
9 to have monitoring, the how they're going to meet the monitoring requirements in it. It's  
10 going to be the blueprint for how to comply with this regulation. And once we buy off on  
11 that and they implement all the provisions of that, if it's still -- if we still have a big problem  
12 at the end of two years, or if it looks like that hasn't been enough, we're going to have to sit  
13 down together and work together. Because we, at that point, will have bought into the  
14 plan as being adequate to work. And neither one of us at this point knows exactly what  
15 that's going to take. So when we sit down, we're not -- we're not going to just say, hey,  
16 we approved this plan but hey, it didn't work, sorry. You know, you're going to get hit  
17 over the head because of that. We will sit down, and hopefully we will discover before we  
18 even get to the end of that compliance period that well, it looks like it's not working well  
19 enough, what else can we do to put other measures in place to try to make sure that we're  
20 reducing to the levels that we need to related to the rule.

21 So it's going to be a give and take kind of thing. And that's -- I serve at your direction and  
22 your pleasure. And I am going to implement the direction of the Board. And I -- you  
23 know, from everything I hear, the direction of the Board is work closely with them to make  
24 this work, don't beat them up, help them.



1 **DIRECTOR FONZI:** Thank you. A question about the fees, as well. We know that the  
2 State Parks is a governmental agency, as is Air Pollution Control District Board. When you  
3 take money from a governmental agency, it's a little bit different than taking it from a  
4 business owner that may have a diesel engine that's polluting. The pain is not the same.  
5 Why is the fee going to be helpful, in your mind?

6 **MR. ALLEN:** Which fee are you referring to?

7 **DIRECTOR FONZI:** If there's a violation, you enforce your rule.

8 **MR. ALLEN:** Right. We don't rely on penalty revenue to fund our budget. It's a very  
9 small portion, less than one percent of our budget. So it's not something that we think  
10 about as a revenue source. It's just simply another compliance tool that we use with  
11 discretion whenever we see a violation of a -- you know, if it looks like it's warranted, we  
12 impose it. If it didn't look like it's warranted, we don't. And so that -- but it's not a  
13 revenue source for us. That is not --

14 **DIRECTOR FONZI:** I'm not stating that it is. That wasn't really what I'm asking you.  
15 I'm asking you that if we want to reach a goal, that we want to reduce the particulate  
16 matter, is the fee really helpful when it goes from government agency to government  
17 agency?

18 **MR. ALLEN:** Well, I'm not -- I'm not sure that government agency to government agency  
19 is the key factor in looking at that right now. I mean, we regulate other government  
20 agencies. We have the State CMC, Cal Poly. Gary could list off a half a dozen for you, I  
21 think. And some of them have been subject to penalties in the past for repeat violations  
22 where we come to their staff and we say, look, you guys, you know, are violating the  
23 emission regulations of this regulation, you haven't maintained your equipment for the last  
24 two years. You know, all sorts of things. And when it comes to that case, they have

1 been found in violation and they have been penalized for it. But it's not like -- we can't  
2 treat a government agency any differently than we treat a private business. That's not  
3 allowed. It's not allowed for us to cut a break to a government agency that is guilty of the  
4 same infraction of a private business. Because then that is showing favoritism. And it's  
5 the same impact occurring.

6 **DIRECTOR FONZI:** Let me try it again. That's not quite what I'm getting at.

7 **APCD STAFF:** Okay.

8 **DIRECTOR FONZI:** You're stating that we can't provide any favoritism, and I would never  
9 expect that we would. I'm not asking you that question.

10 I'm trying to see how this is productive to reaching the goal of reducing the particulate  
11 matter, that if you were to fine a private industry or private businessman, it hurts his  
12 billfold, it hurts the bottom line. A public agency doesn't have a bottom line like a  
13 business does. So I'm not sure that it's productive. And I'd like to hear why you think it  
14 would be productive in leading them to the place that you'd like them to go.

15 **MR. ALLEN:** I don't know if it's going to be productive or not, to be honest. You know,  
16 frankly, I think -- as I mentioned, it is just one of many tools that we have as a regulatory  
17 agency for trying to bring a regulated entity into compliance with our rules and regulations.  
18 We don't always use it. I don't think we've ever stated that we -- the papers state it.  
19 They say, oh, they can be fined -- you know, for every day in violation, they can be fined a  
20 \$1,000. Well, that's in the Health and Safety Code, but that doesn't mean that that's how  
21 we will do it. And it totally depends on the circumstances and any mitigating factors that  
22 are present at the time in looking at it.

23 **DIRECTOR FONZI:** Thank you.

24 **CHAIRPERSON GIBSON:** I take it that it is the tool of last resort. And actually, it is not

1 anywhere close to the primary tool and rarely -- relatively rarely used.

2 **COUNSEL RAY BIERING:** Mr. Chair, if I could offer some guidance on this, it might help  
3 respond to Ms. Fonzi's question.

4 The goal of the APCD has always been -- as long as I've been the counsel and as long as I've  
5 worked with either Larry or his predecessor, that enforcement is not something for  
6 punishment. It really is to achieve compliance. So in every case, typically the way it  
7 plays out, is there's a considerable amount of discussion that goes on. Often with me  
8 involved in it, in terms of what are the factors of this one, is this one an intentional  
9 violation, is the person intentionally breaking the law, or is this something else? And I  
10 think there's a lot of opportunity, a lot of leeway here for the APCO, essentially acting  
11 under your direction. In that instance where we're looking at, they're not fees as much as  
12 penalties to take a governmental agency into consideration. I mean, we would look at it  
13 in terms of what are we really trying to see here. Not get \$5,000, but to get the PMRP in  
14 place.

15 And so I think it really is that the system is set up and it operates in a way where -- exactly  
16 what I think the Board is trying to accomplish here. And that's not just hit them with  
17 penalties. That will occur. I mean, we will be looking at it on a case-by-case basis. It  
18 will be depend on what the violation is or what the reason is, so...

19 **CHAIRPERSON GIBSON:** Mr. Mecham?

20 **DIRECTOR MECHAM:** Thank you, Mr. Chairman.

21 (Simultaneously speaking.)

22 **DIRECTOR MECHAM:** I tend to disagree with your concept of this is a tool of last resort.  
23 And the other thing that bothers me is we're spending so much time here criticizing either  
24 the study or criticizing each other. The building industry criticizes the off-road, the

1 off-road says they're cutting down trees and they're grading roads and everything else.  
2 We're missing the whole point. We know there's a problem. The APCD knows there's a  
3 problem. The Parks knows there's a problem. And these folks are living with the  
4 problem. So we need to address the problem.  
5 And I don't know that -- two things that makes me really nervous when Mr. Sutty and  
6 Mr. Greening reference the issue about roads. So where would you go from a  
7 county-wide Fugitive Dust Rule? Pave everything? Because then where does it go from  
8 there? Well, let's pave grazing land because the cattle threw up some dust. And then  
9 let's pave the parks because we might have a problem there. I think that's getting a little  
10 bit ridiculous.  
11 If, in fact, this is the tool of the last resort, as you suggest, why do we have MOA's and  
12 MOU's? We have an MOA here that suggests what they will be doing. And I  
13 thought -- two years ago when we first sat down to talk about this, I -- from what I  
14 understand, was the first time we really got together to start really trying to work together  
15 to get somewhere. And when we sat at the table, Parks said that they recognized there  
16 was an issue here.  
17 Then we get into this big fuss about this study, and everybody is saying this is not right or  
18 that's not right. Well, I'm not smart enough to understand that study in its completion, I  
19 can tell you. And I challenge everybody up here to take it apart too.  
20 So I think that they have been working towards something. And if we truly are working in  
21 the theme of collaboration and trying to get somewhere, I don't understand why we have  
22 to impose a rule. And to suggest that Mr. Allen is the one that's responsible for this rule,  
23 the Board is the one that gave direction to put together and impose a Fugitive Dust Rule.  
24 So I think that we're straying way away of where we're trying to go. And I don't believe

1 that a rule is required to enforce a Memorandum of Agreement that already says this  
2 development that -- the implementation that they're going to use for this Particulate  
3 Matter Reduction. It's already there. I think we're -- I think we're trying to reach out  
4 there a little farther than we really need to go.

5 So I can't support a rule when we already have a Memorandum of Understanding and a  
6 Memorandum of Agreement that are willing to work to get to someplace. It doesn't make  
7 sense to me.

8 And it has -- and one other thing. Somebody has said to me, well, then you must not care  
9 about people's health. Well, that's absolutely wrong. We took out an old beaten down  
10 merry-go-round out of the city park, and so we were accused of not liking kids. If we  
11 reduce the funds in the library, we don't like books. It just gets a little bit ridiculous. We  
12 do care about people's health, and we do want to be able to get somewhere. But I don't  
13 want to see us getting bogged down and stuck in a situation where we can't move forward  
14 because all the sudden, the litigation flags go up.

15 That's enough from me.

16 **CHAIRPERSON GIBSON:** Thank you, Mr. Mecham.

17 Mr. Hamon, and then Mr. Hill.

18 **DIRECTOR HAMON:** Thank you, Mr. Chair. I've been listening here for quite a long time,  
19 many years actually now.

20 I think really, we're not here to regulate natural-occurring winds that make the saltation a  
21 problem. We're here to regulate emissions from users.

22 And again, state Parks has acknowledged that there is a problem. We acknowledge  
23 there's a problem. I think the people who are living downwind from the problem have  
24 acknowledged there's an issue.

1 Stepping back a bit, I sometimes question whether we should have even allowed  
2 development downwind from a natural-occurring dust generator. I mean, that's  
3 something that the supe's should be thinking about in the future.

4 But given where we are now, State Parks, I think in my opinion, have demonstrated the fact  
5 that they want to do something. They want to comply. They want to make a plan. I  
6 question putting a rule in place before a plan is in place. But if that has effort to make  
7 things move forward, then I don't have a problem with really voting for that. And given  
8 the opportunity that the two are working and talking together and they have a good  
9 relationship at this point.

10 You know, I think that we definitely want to see an action. We want to see performance.  
11 We want to have a measurable type of compliance that we can all wrap around saying that  
12 we are making a difference. That's where we really want to go. We're never going to  
13 stop the dust from moving. That's a natural -- what made the dunes in the first place.  
14 I'm never going to support closing down the SVRA either. So we need to work forward to  
15 mitigate as best as possible as man can do.

16 And as science moves forward -- I mean, I'm sure that -- what I would like to see, anyway, is  
17 additional science, additional new findings, being brought back to us as we move forward  
18 through this problem. Again, it's something that -- like Frank said, there's no way all of us  
19 are going to get down deep into the report to understand it fully. But as things come  
20 forward and bring our minds to light and that possibly from that information, a new way of  
21 mitigating the emission can be talked about and put into place, I think State would be  
22 willing to move forward on something like that. I think that that would be the way to  
23 move forward.

24 Again, you know, I do have a question too, maybe from APCD. You know, when we get

1 into these hearings that we -- I think we'll probably get to the point where the violation  
2 occurs. Do we have an ad hoc in place? Do we have members of this board that would  
3 sit in with APCD staff? I don't think we do. That might be something we might want to  
4 have a member or two attached to to be able to have some sort of a reference to. I'm not  
5 sure if some staff can address that now or not.

6 **COUNSEL RAY BIERING:** Mr. Chair, maybe I can address it.

7 And actually, I don't think that's permitted by the Health and Safety Code. The State  
8 statute, the Health and Safety Code that sets up this process, clearly distinguished between  
9 the role of the APCO and enforcement and the role of the Board in terms of policy-making  
10 and directing the overall board.

11 The reason there's that separation -- and it goes back to sort of the wisdom of the  
12 legislators, I suppose, who created this system, was to make sure that the enforcement  
13 process didn't become political in any way, shape, or form, so that the very board that's  
14 making these rules isn't also somehow involved in the enforcement end of it. That's why  
15 it's delegated it to the APCO and then set up a whole separate hearing board to hear  
16 variances and that sort of thing if there's disputes.

17 So partly, I think that was done to protect the board. It was to insulate this board from  
18 having to get involved in those kinds of (unintelligible).

19 **DIRECTOR HAMON:** Then I guess the question is who makes up the hearing board?

20 **COUNSEL RAY BIERING:** The hearing board is appointed -- it's designated by statute. It's  
21 appointed by your board. And so you've appointed these members from time to time. It  
22 consists of an engineer. It's required to have an engineer on it. It's required to have an  
23 attorney on it. It's required to have a physician on it, a member of the public. And then  
24 there's several other specified people that have to be on this hearing board. It's a

1 standing board. They actually serve terms. And they go to hearing board training by the  
2 Air Resources Board.

3 So I think certainly, your board can get at the enforcement arena to the extent that, you  
4 know, you control the ultimate APCO, because he serves at your pleasure. But on a  
5 case-by-case basis, the law has set it up so it's supposed to be separate.

6 **DIRECTOR HAMON:** Do they report back -- I don't think I've ever heard of a case being  
7 brought back to the Board for just reference sake, that the appeals board or the board is  
8 hearing a certain case. Do we have any kind of report on that?

9 **COUNSEL RAY BIERING:** We haven't. The last one I can recall was a very large  
10 variance -- no, I'm sorry. It was a nuisance abatement case involving UniCal back in the  
11 '90s, earlier in my career with the County Counsel's office. In recent years, we haven't had  
12 have many variance meetings at all, simply because the process has worked well and  
13 applicants haven't seen a need to request a variance. But we certainly could, I think as  
14 part of the Executive Officer's report or maybe my report, if we had a variance situation, it  
15 would be within the purview of this board to direct us to bring back a report to you to tell  
16 you what happened.

17 **DIRECTOR HAMON:** I would suggest to the Board that that would be a topic of discussion  
18 for a future date.

19 **CHAIRPERSON GIBSON:** I think we could also request -- direct regular updates on this.  
20 This is clearly --

21 **COUNSEL RAY BIERING:** Clearly.

22 **CHAIRPERSON GIBSON:** -- the biggest issue before our staff. And I would encourage  
23 regular updates on progress as we move forward.

24 **COUNSEL RAY BIERING:** Especially on something like this.



1 **CHAIRPERSON GIBSON:** Mr. Hill?

2 **DIRECTOR HILL:** Thank you, Mr. Chair.

3 I just -- you know, you mentioned -- and there was some disagreement on whether the rule  
4 and any penalties that are attached to it are a tool of last resort.

5 But they're also -- and it's important to understand, they're a tool of compliance. And we  
6 see that all the time. And In fact, those tools of compliance are probably most important  
7 when we're coming to issues of public health. We don't just say, well, we hope voluntarily  
8 that people will respect the hazards to others' health. We want to make sure that we  
9 have, as other people have said before, the stick too. In fact, we've been criticized by  
10 some who live on the Mesa for not having a very big stick in this matter.

11 I would agree with our Chief Health Officer. And I'll remind everybody that Dr. Borenstein  
12 is the Chief Health Officer of the entire county. Not just the towns, but the cities. And in  
13 her role, she has taken this very seriously and has called it in her letter a "middle ground  
14 move" to do this.

15 We've heard Mr. Jenkins say candidly this that rule would not close the park, would not  
16 close the recreation area. We've heard it from Mr. Allen. And I think that's important,  
17 because of some of the ways that this issue has been unfortunately -- and I guess this is a  
18 pun intended -- clouded by all this fear, as Mr. Versaw said. And I had the pleasure of  
19 once being one of Mr. Versaw's constituents when he was my representative on the Grover  
20 Beach City Council. And now I have the reverse pleasure of being his representative in  
21 this particular issue. And I think he's right, that this has been a terrible distraction. We  
22 have, you know, a character assassination of conspiracy theory, of all sorts of sort of online  
23 cult activities that people have been participating in that I think have led to a frenzy of  
24 misinformation that's, quite frankly, irresponsible. I think we deserve better. We need

1 to treat our citizens better than that. And we need to work better together, I think both  
2 with staff and with partner agencies, as well.

3 So for me, this is pretty clear that, you know, passing this rule and continuing to direct staff  
4 to work. And as our role on the board, continuing to get updates and to look at things as  
5 they come up and to address any issues that might come up, is doing the right thing. It's  
6 meeting our obligation, our essential obligation. And it's being honest to our constituents.  
7 And it's being honest to ourselves what this is about.

8 I've always been in favor of the recreation area. And I don't use it. But I understand that  
9 a lot of people do. I've been down there enough to realize that it's a good cross-section of  
10 folks from all over, not just -- we've heard from some of them. They were worried that  
11 this would shut down the park. It's not. They were worried that somehow we shouldn't  
12 act without science being sound. I think that we've shown, and many people have shown  
13 that it is. So I -- you know, I, myself, don't see this as threatening that at all. I see this as  
14 just a necessary job of making sure that we have a tool of compliance as we move forward  
15 and hopefully continue to have a good working relationship on these issues with the OHV  
16 division of State Parks. And I hope that people will stop fertilizing fear throughout the  
17 community and attacking people's motives.

18 I went into this maybe with the opposite motive than some people who looked at the  
19 study, which is I don't want, really, to have to deal with this issue in great detail, as we have  
20 for years. It would have been easier not to. We have a role as a Board of Supervisors  
21 that's a little bit different. And people mentioned the phrase a couple of times "skin in  
22 the game." We've got a lot of skin in the game. We own property. We've been told  
23 several times by our County Counsel that we are exposed to serious litigation were we not  
24 to act, were we to show that we were not acting with due seriousness. That's far

1 more -- far more dangerous to taxpayer dollars than what the Friends of Oceano Dunes  
2 might try to attempt in suing the APCD or the County.  
3 And we also have responsibility, once again, first and foremost, to the residents of the  
4 Mesa. And, you know, I think that the either/or choices need to go away. It's not  
5 either/or. We can reduce PM pollution and make sure that there aren't going to be health  
6 hazards affecting our residents. And we can let the recreation area continue to be a place  
7 for people to come and enjoy themselves. And I think that hopefully, that will be the way  
8 that our agency and Mr. Jenkins' agency and others will continue to work forward. And I  
9 hope that we can -- we can put down some of the -- you know, the hysteria that surrounds  
10 an issue that in many ways is quite simple. Very simple to what the APCD has done in a  
11 variety of other areas. It just didn't have the political attraction or radiation that this issue  
12 has.

13 So those are my comments, Mr. Chair.

14 **CHAIRPERSON GIBSON:** Thank you, Mr. Hill.

15 Mr. Patterson? And I'm looking for further comments to the Board. I'll take the last, and  
16 then hopefully get to action here.

17 Mr. Patterson?

18 **DIRECTOR PATTERSON:** Yes. Thank you, Mr. Chair. Couple of quick questions for  
19 Mr. Allen.

20 Mr. Jenkins, in reference to the cooperative relationship that we have had working with  
21 State Parks, he implies that that could be threatened with the implementation of a rule.  
22 And they have consistently -- "they" being State Parks -- raised issues with the study and  
23 the validity of certain aspects of it. And we've had a long conversation about that during  
24 the deliberations about this issue since the very beginning.

1 And I'm curious you from your perspective if you feel that we can continue to work through  
2 those differences of opinion on issues within the studies, if it's been problematic in our  
3 relationship with the State Parks so far in implementing the mitigation trials that we've put  
4 out there. Have you had a good working relationship with them, and has the issue he  
5 raised today about those differences and the passage of a rule, how those differences  
6 might impact our relationship or APCD's staff relationship with State Parks? Do you see a  
7 problem there?

8 **MR. ALLEN:** I don't see a problem, no. I think that the rule itself, the way it's structured,  
9 is going to provide the proof in the pudding, so to speak. Because it requires monitoring  
10 from downwind of the riding area and monitoring from downwind of a comparable control  
11 site. And they might need a couple pairs of that. Maybe one at the north end and one  
12 at the south end. I don't know exactly how. But I think we're going to sit down and work  
13 out how that's going to happen.

14 And regardless of any disputes on the validity of the findings of the study or what have you,  
15 that is going to show what the reality is. And the mitigation required is going to be based  
16 on that.

17 And so I think that we should be able to put aside all of the other, you know, questions and  
18 so forth that have been raised and say this is going to be a defining piece of the impact of  
19 that area, and they are only going to have to reduce emissions down to that incremental  
20 difference.

21 And so I really believe that we can work with them. It's going to be critical that we select  
22 good sites. And so that's going to a key piece that we work very closely with them on.  
23 And hopefully, we hire professionals that we can both agree on and we rely on them to  
24 provide an unbiased assessment of where the best locations would be. And I think that

1 we can come to that kind of agreement with State Parks. And I think that Phil has  
2 indicated that he wants to work with us. He's shown that.

3 **DIRECTOR PATTERSON:** Okay, yeah. Mr. Jenkins also mentioned that they've been  
4 unable to site a couple of towers that would provide wind speed information for them, and  
5 suggest that maybe we help advocate for that through the permitting process and get  
6 those towers in place so we can start getting that data. Is that something we've done, or  
7 is that something you would recommend that we do to help facilitate the actual  
8 implementation of instrumentation or treatments that will give us the data that we're  
9 looking for?

10 **MR. ALLEN:** Well, we've kind of stayed out of that whole thing. But I think that -- and to  
11 me, that's kind of a separate piece. Because the monitoring requirement is going to  
12 include meteorology. You have to have wind speed and direction with the PM samplers.  
13 And so they're going to have to site net towers at those sites. That's going to be the most  
14 important point, in my mind, to measure that.

15 If State Parks wants to do additional studies, like to do some of their own sand flux analysis  
16 in different areas, we would certainly be willing to help them and talk to the Coastal  
17 Commission and, you know, see if they can move that forward. But that's kind of a  
18 separate issue from this, I think. I don't think that --

19 **DIRECTOR PATTERSON:** Okay. Well, I was just curious if that is something that we -- we  
20 could do to help implement the program.

21 **MR. ALLEN:** Certainly. We can talk to the Coastal Commission and let them know that  
22 we see value in that.

23 **DIRECTOR PATTERSON:** Thank you. And just a quick comment to sum up.

24 I do have great concerns about the particulate matter that is coming off the dunes. I think

1 it's our responsibility as an Air Pollution Control District Board to address that. And we've  
2 been discussing it for a couple of years now. And we need to take definitive action. Our  
3 Public Health Officer, in submitting a letter, has opined that it is a definite health issue.  
4 And I think we're obligated in our role as board members of this agency to do that. I also  
5 think that the rule will establish definite criteria and timelines and standards by which we  
6 can measure our success. So I am in supportive of adopting a rule at this point.

7 **CHAIRPERSON GIBSON:** Thank you, Mr. Patterson.

8 Mr. Waage, back to Mr. Teixeira, and then to Ms. Marx.

9 **DIRECTOR WAAGE:** Thank you, Mr. Chairman.

10 I appreciate all my colleagues' comments. I too am concerned about public health. I'm  
11 concerned that we have to make sure we get this done right, or we may spend lots of  
12 money and not make any incremental changes in public health.  
13 Certainly, the amount of particulate we have out there is -- can be quite high. But it's very  
14 hard to tell if vehicle riding is making much difference. I am concerned that -- I guess what  
15 I propose is an incremental approach, that we ask staff to propose, basically strip out some  
16 of this portion and leave in the Particulate Matter Reduction Plan portion and also look  
17 at -- ask staff to look at ways of trying to get a better sense of what the data are telling us.  
18 The reason why a lot of this discussion about the technical aspects is because we didn't  
19 have good wind data, for example, in the dunes. Had we had that, we wouldn't be having  
20 that discussion today. I think State Parks is already trying to get additional wind data.  
21 That would give us more information.  
22 So I would say I think the science is still a little cloudy, to use someone else's term. And  
23 we need to make sure we get it right if we're going to ultimately succeed. So again, I  
24 recommend an incremental approach. First of all, start with Particulate Matter Reduction

1 Plan. Get additional monitoring that -- and support the effort by State Parks to get  
2 additional wind monitoring, PM monitoring too, if the step -- if both agencies agree. Get a  
3 better idea and report back. Let's try it. Let's go down the path where we know we'll get  
4 results right now. I fear if we take some other steps, such as adopting this rule, it'll be a  
5 step backwards. Because I think we know where this is going.

6 **CHAIRPERSON GIBSON:** Thank you, Mr. Waage.

7 Ms. Bright and Ms. Marx. I'm sorry. My mistake. Mr. Teixeira. There's no way I  
8 should get you two confused. Mr. Teixeira and then Ms. Marx.

9 **DIRECTOR TEIXEIRA:** Thank you, Chairman Hill. Oh no, it's Mr. Gibson.

10 **CHAIRPERSON GIBSON:** That's right. Fair enough.

11 **DIRECTOR TEIXEIRA:** I too share the concerns for our residents health as my colleagues  
12 have expressed. And having lived down there for a number of years, I think this problem  
13 has been coming. I've seen it get worse. Mr. Suty -- both Mr. Sutys referred to the  
14 development on the Mesa as a cause of it. I think that the thing that they overlooked is as  
15 the development of the Mesa has increased, so has the activity on the dunes. I can  
16 remember going down there -- yes, I can remember going down there in the '60s, and there  
17 was nobody there. Mr. Cardona, you can correct me if I'm wrong. But there's more  
18 activity on the dunes today than there was 30 or 40 years ago.

19 That being said, there's also less area for people to use in the dunes. And I think that's a  
20 very sad state of affairs, because we had a very robust and available dune area for people  
21 to ride in and enjoy from Pismo Beach all the way down to Muscle Rock. And it's been  
22 closed down. And I find that's very sad.

23 I think that we need to move forward. We need to look out for the health of our  
24 residents. But we also need to be very aware of the value of this park and the value of the

1 recreational areas. And what's brought the people to our area? Our recreation, our  
2 tourist attractions, our whole recreational environment here in the Central Coast, this being  
3 part of it, has brought people to live and enjoy this area. And this may be one of the  
4 downfalls of it, is maybe we've brought too many people. We were too nice and provided  
5 too good of an environment for them. That being said, I welcome everybody here, and  
6 we're glad that you're here. But we'll go from there.

7 Thank you.

8 **CHAIRPERSON GIBSON:** Thank you, Mr. Teixeira.

9 Now Ms. Marx, and then Ms. Bright.

10 **DIRECTOR MARX:** Thank you.

11 Yes, well, I just want to say that I really appreciate all the work that staff has done on this.

12 And I read every single word in this 222-page document there. I also read a lot of emails.

13 I was quite interested to hear that there are 28,000 members of the Friends of Oceano

14 Dunes. I did not count the emails, but I had the feeling when I was reading them that it

15 was something close to 28,000 emails.

16 I think it's significant that the local residents came forward in such numbers, and that we

17 heard from people who live far away and love to come to the dunes to -- and the riding

18 area to enjoy themselves. You know, I just want to say the people who live here, and

19 especially who live downwind from the dunes, they're kind of sitting ducks in a way. They

20 live there. And I talked to someone. I talked to a friend just the other day who they

21 moved there, her husband developed COPD, and now they want to sell their house and

22 move, but they can't because of the real estate market. It's really hard. It's like the least

23 amount of real estate activity in decades is what we're experiencing right now.

24 So I really feel for the people who are experiencing this particulate matter. And I'm really



1 interested in being able -- this board being able to measure objectively what portion of that  
2 might result from the vehicle use of the dunes. So to me, the rule has several virtues.  
3 And one of them is that built into it are further studies. I don't think we need to postpone  
4 adoption of this rule so that we can get further studies, because further studies are really  
5 kind of at the heart of what we're talking about.

6 I think that placing instruments to assure that on an hourly basis, placing monitoring  
7 stations in strategic places, this introduces an element of accountability that we really  
8 need. And I think there's some reluctance on the part of State Parks to be held to that  
9 measure of accountability. But I can tell you as an entity that's dealing with Regional  
10 Water Quality Board and other such regulatory agencies, having those fines out there, it  
11 sort of gets you motivated sometimes. And so I hope we would never use them. But I  
12 do feel that it's important.

13 I want to say that the reluctance to find out objectively what really does the vehicle traffic  
14 on the dunes produce in terms of the fugitive dust reminds me of an uncle I had who  
15 refused to go to a doctor, didn't want to have medical tests because we said, well, I'm not  
16 going to a doctor, they might find something. You know, well, he's not around anymore.  
17 He died of colon cancer because he didn't ever have a screening.

18 Now, I think there's an element of let's get down to the facts of the situation. I think that  
19 this rule provides a good roadmap. And as Mr. Biering pointed out, our mandate is to  
20 protect the health and safety of the people. That's our first duty. And I think that  
21 we -- we need to move forward.

22 Thank you.

23 **CHAIRPERSON GIBSON:** Thank you, Ms. Marx.

24 Ms. Bright?

1 **DIRECTOR BRIGHT:** Thank you.

2 Before I make comments, I'd like to get one clarification, if I could, regarding MOA versus  
3 the rule. When I believe Ms. Fonzi had asked about -- or I'm not sure. Mr. Mecham,  
4 possibly. We have an MOA in place. Why do we need the rule? And Larry, you had  
5 responded something like I'll do whatever, so sue me. So can you kind of elaborate on  
6 that just a little bit? And I will as well once you answer my question. I'm --

7 **MR. ALLEN:** Sure.

8 **DIRECTOR BRIGHT:** -- doing this for my board -- I mean, for my counsel.

9 **MR. ALLEN:** And I'm sorry, I did not mean to appear flippant in my response. It's just  
10 that there's -- without a regulation in place, the Air District has little authority to act if  
11 things are happening that shouldn't be happening there.

12 And the MOA that's referenced here is actually no longer in place. There's a new MOA  
13 that is in place with them that is very simple that basically says we'll work together  
14 cooperatively to try to find solutions to this problem. So this specific MOA that has all of  
15 the information in it and defines how the PMRP would be developed and so forth has  
16 expired.

17 And I think it would probably be better for Ray to kind of talk about the distinction between  
18 an MOA and a regulation. And I know that from a regulatory standpoint, when I said, well,  
19 you know, sue me, that's really the only option you have when you have a disagreement in  
20 an MOA. If you can't come to resolution -- I mean, you can -- you can set up a formal  
21 mediation process and go to an arbiter and try to argue your side versus their side.

22 But as an air pollution control agency charged with protection of public health, our real  
23 requirement is to make sure that what we implement has a chance of attaining the results  
24 that we need to to protect public health, and that if there are failures to act in a manner in

1 a responsible manner to follow that regulation, that there are compliance tools to make  
2 sure that that happens. Don't have that with an MOA. It's really an agreement.

3 **DIRECTOR BRIGHT:** Okay. Thank you. That was --

4 **MR. ALLEN:** And I think Ray can elaborate.

5 **COUNSEL RAY BIERING:** Let me perhaps add a little to that.

6 The difference between an MOA and a rule is considerable. The MOA I think in this case  
7 was intended as an immediate effort to try to work with the State Parks to bring forth some  
8 kind of a solution. But it doesn't really achieve the mandate that we have to comply with  
9 under the Health and Safety Code, our enabling statute.

10 And I'm looking at the section right now dealing with rules and regulations. And I hadn't  
11 thought of this before, but it's rather telling. It says, "Subject to the powers and duties of  
12 the State Board, the districts shall" -- not may, shall -- "adopt and enforce rules or  
13 regulations to achieve and maintain the State and Federal ambient air quality standards in  
14 all areas affected by emissions sources under their jurisdiction and shall enforce all  
15 applicable provisions of State and Federal law."

16 To the extent that PM is one of those criterion pollutants that we need to address, I think  
17 we actually have a mandate that we need to do something about it. If we've identified it,  
18 we have to address it. And we can't just do it through an agreement with an applicant.  
19 That's one way to get there. But we really should be adopting some kind of a rule or  
20 regulation.

21 **DIRECTOR BRIGHT:** Thank you. That answers that. Thank you very much.

22 Well, my counsel was very definitive in their direction to me. They were very concerned  
23 about whether this could be legally defensible. And that was why I asked the question  
24 when you had said so sue me.

1 So then to follow up on that just a bit then, Ray, can you address that just a bit for me,  
2 please?

3 **COUNSEL RAY BIERING:** The question being the legal defense -- sorry -- the legal  
4 defensibility of the rule?

5 **DIRECTOR BRIGHT:** Of the rule.

6 **COUNSEL RAY BIERING:** Yeah. And --

7 **DIRECTOR BRIGHT:** And the science. I guess the whole -- my counsel said the science.  
8 But I guess it's based on our findings or...

9 **COUNSEL RAY BIERING:** I can't advise individual council members on their role with their  
10 own counsel. But I can say that I'm not sure that a City Counsel's direction to a member in  
11 this instance is even enforceable. But that's between you and your counsel.

12 We have an obligation, as I mentioned, to look at this in terms of the entire air basin. And  
13 I think each and every board member up here has that obligation. And it's created by  
14 State law.

15 The case I mentioned this morning, Southern California Gas Company versus South Coast  
16 Air Quality Management District, is kind of fortuitous, because there actually is a very good  
17 discussion in there about the whole concept of what's defensible and what's not. And  
18 what the Court said is that what we're doing here today, a rule, is a quasi legislative act.  
19 And the Supreme Court itself has said within its jurisdiction, the agency has been delegated  
20 the Legislature's lawmaking power.

21 In reviewing the legality of a regulation, which this would be, the courts are really limited to  
22 two considerations. One is the regulation within the scope of authority that's been  
23 conferred by the Legislature. And I think the answer we've talked about extensively is yes.  
24 The second is, is the regulation reasonably necessary to effectuate the purpose of the

1 statute? And I think staff has endeavored to try to present evidence to you that that's the  
2 case.

3 To get to the point in terms of its defensibility, "The Court recognizes that our inquiry" -- I'm  
4 quoting -- "necessarily is confined to the question whether the classification or the  
5 regulation is arbitrary, capricious, or without reasonable or rational basis." And it points  
6 out that of all administrative decisions, quasi legislative acts receive the most deferential  
7 level of judicial scrutiny.

8 Now, that's a lot of legal gobbledygook. But what that boils down to is that a court may  
9 not substitute its judgment for yours in terms of science. It can't do that. It can look to  
10 whether or not there's some reasonable basis for what we're doing, it's not the work of a  
11 madman. But it can't say you should have accepted this report and not that report.

12 There aren't going to be expert witnesses in this. It's going to be purely a question of if  
13 you, as the legislative body weighing the evidence, which I think is exactly what you've  
14 done, and choosing what to decide. And I think from everything I've heard through this  
15 meeting, through all the prior meetings, there's more than ample substantial -- there's  
16 more than substantial evidence to support the fact that there is a rational basis for  
17 whatever decision you choose today, and that that decision would not be arbitrary and  
18 capricious. So I think whatever action this boards takes, it is defensible.

19 **DIRECTOR BRIGHT:** Okay. Thank you. So those were my questions.

20 Now, my comments -- I'll be very brief.

21 Basically, at this point hearing all that I've heard, I don't believe that I've heard anything to  
22 the contrary that would make me change my mind about the underlying fundamental, that  
23 disturbed soil is more easily moved than undisturbed soil.

24 So that leads to the conclusion that a disturbance makes sand particles more susceptible to

1 wind movement than they would be without the activity. That's how -- that's how I would  
2 feel about -- how I do feel about this.

3 I, though, believe that my counsel has given me very direct -- a direction to oppose this  
4 rule. So I'm at a -- I have a moral dilemma and a bit of a sticky wicket. And so I -- that's  
5 where I am. I believe I will -- I don't know if I should say this now, but I believe I will have  
6 to abstain from this vote.

7 **DIRECTOR MARX:** Can she --

8 **CHAIRPERSON GIBSON:** All right.

9 **DIRECTOR MARX:** -- can she abstain?

10 **CHAIRPERSON GIBSON:** Hang on. The question -- so the question is, can she abstain?  
11 Mr. Biering? I think the answer is clear.

12 **COUNSEL RAY BIERING:** The answer is clear. She may abstain.

13 **CHAIRPERSON GIBSON:** Okay. And we, in considering the motion here, we are simply  
14 going with a majority of voting members on this -- on this matter.

15 **COUNSEL RAY BIERING:** That would be correct.

16 **CHAIRPERSON GIBSON:** Okay.

17 **DIRECTOR BRIGHT:** Thank you.

18 **UNIDENTIFIED SPEAKER:** (Unintelligible).

19 **DIRECTOR SMUKLER:** Yeah. Thank you. I've listened to this closely and reviewed the  
20 emails I've received, many of the correspondence, both in the media and via conversations  
21 that I've had and the work that the Air Pollution Control District and our consultants have  
22 provided. And I'm satisfied that we've followed the process. It's taken many years.  
23 And at this point it's imperative that we take action, that we move forward, and that this  
24 rule gives us a reasonable, flexible opportunity to evolve and take in new information as

1 necessary and make sure that we're providing State Parks the ability to address the  
2 problem as much as possible and that we can adjust our direction, if necessary, from the  
3 Board's perspective and from Air Pollution Control District.

4 And I believe Ms. Marx summed it up well with the word of keeping our accountability from  
5 both sides, from the Air Pollution Control District and from State Parks.

6 So this is something that is going to help protect public health. And I believe State Parks  
7 will be in the driver's seat for this, which is important. So I also appreciated the concept  
8 of regular updates as we move forward. I think that will help the public and ourselves  
9 remain in the loop on this.

10 So I'm in favor of going forward with the rule.

11 **CHAIRPERSON GIBSON:** Thank you, Mr. Smukler.

12 Are there any follow-up questions here? Mr. Guthrie?

13 **DIRECTOR GUTHRIE:** Yeah. I guess I'll go (unintelligible).

14 As someone who kind of parachuted into the middle of this --

15 **CHAIRPERSON GIBSON:** Welcome.

16 **DIRECTOR GUTHRIE:** -- I did spend some time kind of following the history of this. And I  
17 do think that when you look back at the series of studies, that there was -- there was a path  
18 that led us to where we are -- to where we are at this time, which is we -- you know, we've  
19 identified there's a problem. We identified, you know, what the makeup of the problem  
20 was. And at this point, we've identified at least what we think what is the major -- a major  
21 source of the problem.

22 So I think that we are obligated to move forward at this point. I think the difference  
23 between a Memorandum of Understanding and a rule (unintelligible) Commissioner  
24 Mecham's point, is that at one, it is a rule. That there really is a whole nother level of

1 legislative action.

2 I think the real key here is, and I think the reason that we're getting so much pushback on  
3 this study, is because we're also setting a threshold. We're saying that it's not just that  
4 you're part of the problem, that you're this much a part of the problem. And I think that  
5 Commissioner Marx's comment that we're actually going to get a second study out of this,  
6 in a sense, when we set that threshold. I actually think that's going to be very difficult.

7 But I'm prepared to support the rule, understanding that that is actually what we're going  
8 to be doing, is establishing that threshold.

9 And so I'm prepared to support it, as did our other Councilman Costello in the past.

10 **DIRECTOR MECHAM:** I have a follow-up question.

11 **CHAIRPERSON GIBSON:** Yes, Mr. Mecham?

12 **DIRECTOR MECHAM:** I just have one quick question. And I do understand the difference  
13 between a MOA and a rule and a regulation. That wasn't the point.

14 But I guess my question is, has the Memorandum of Understanding been violated?

15 MR. ALLEN: No. I -- well, to the extent that it was implemented, no. I mean, we --

16 **DIRECTOR MECHAM:** Thank you.

17 **CHAIRPERSON GIBSON:** I -- and if I might, I'll weigh in at this point.

18 I think quite specifically, the revised MOA spoke very clearly to the roles and  
19 responsibilities. The role of this body is to regulate, to protect the public health. That is  
20 why we're here. That is what we are -- what we are charged with.

21 And the MOA very clearly says that the State Parks Department is in charge of managing  
22 their facility at the Oceano Dunes and in developing a Particulate Matter Reduction Plan.

23 So I think that clarity is absolute. And I think that that is exactly why we're at the place we  
24 are today.



1 I have been involved in the technical weeds of the Phase 2 Study for as long as it's been  
2 underway and before, including visits to the field and extensive discussions with the  
3 principal investigators. And I am convinced without a doubt that we have sufficient  
4 technical basis to move forward with the rule as it is constituted now. Our staff has done  
5 a remarkable job in responding to all criticisms and questions raised against its technical  
6 adequacy, including those that came in today. And I think that there's nothing that has  
7 attacked or weakened the basic conclusions that are drawn.

8 I'm disappointed that State Parks does not accept the findings. But I understand the  
9 position from which they come from.

10 And I really want to speak to those of my colleagues who may be wondering yet before we  
11 take a vote on this whether we need a rule or not. I would point out that the rule that is  
12 put before us is based on an extremely rational approach, in that it zeros in directly on  
13 human-caused pollution and does not regulate above the natural -- below the natural  
14 background. We do know that the dunes were formed by wind, that there are likely to be  
15 dust exceedances from natural causes. But this rule is very specific and has a very rational  
16 technical basis for requiring that manmade pollution be reduced here.

17 The rule also contains a very long period of time where collaboration can take place. If  
18 you look at it, it is not until somewhere in 2015 before the fact of too much dust in the air  
19 results in a violation of this rule. State Parks has testified that they feel they can meet the  
20 timeline set up to do the planning that will put the processes in place. We have made  
21 absolutely reasonable accommodation for things that are beyond their control. So I think  
22 that this does speak to a best management practices collaborative approach.

23 But we have to understand our role as the APCD here and understand why a handshake on  
24 this is not sufficient. That doesn't fulfill our mandate. And I think Counsel spoke to that

1 very clearly. As I said, in the end, we have a very serious, perhaps some might say sacred,  
2 responsibility to dispatch here. And I think that going forward with this rule as it's written  
3 is the correct way of doing that.

4 That said, we have to enter this process -- I think we should enter all processes, but this  
5 process in particular, we enter with a sense of mutual respect. We respect the State  
6 Park's OHV division's operation of a recreational facility. They are enabled to do that.  
7 That is their mission. At the same time, State Parks has to respect our role as a regulator,  
8 as a protector of the public health. And we have to have consequences so that we can get  
9 down to getting the job done of getting the air cleaned up over in the Nipomo Mesa.

10 So with that said, I would be happy to entertain a motion for the approval of this rule as it's  
11 constructed.

12 **DIRECTOR MARX:** So moved.

13 **CHAIRPERSON GIBSON:** Thank you, Ms. Marks. Second?

14 **DIRECTOR HILL:** Second.

15 **CHAIRPERSON GIBSON:** Thank you, Mr. Hill.

16 Any further discussion on this matter?

17 That said, Madam Clerk, a roll call, please.

18 **THE CLERK:** Ms. Marx.

19 **DIRECTOR MARX:** Yes.

20 **THE CLERK:** Mr. Hill.

21 **DIRECTOR HILL:** Yes.

22 **THE CLERK:** Ms. Bright.

23 **DIRECTOR BRIGHT:** Abstain.

24 **THE CLERK:** Mr. Guthrie.

1 **DIRECTOR GUTHRIE:** Yes.

2 **THE CLERK:** Ms. Fonzi.

3 **DIRECTOR FONZI:** I'm torn on this. I am in favor of the rule. But I am not in favor of

4 the fines. So I'm going to vote no.

5 **THE CLERK:** Mr. Hamon.

6 **DIRECTOR HAMON:** I'm in favor of the rule, but not at this point until a reduction plan is

7 in place. So no.

8 **THE CLERK:** Mr. Mecham.

9 **DIRECTOR MECHAM:** No.

10 **THE CLERK:** Mr. Patterson.

11 **DIRECTOR PATTERSON:** Yes.

12 **THE CLERK:** Mr. Smukler.

13 **DIRECTOR SMUKLER:** Yes.

14 **THE CLERK:** Mr. Teixeira.

15 **DIRECTOR TEIXEIRA:** Yes.

16 **THE CLERK:** Mr. Waage.

17 **DIRECTOR WAAGE:** No.

18 **CHAIRPERSON GIBSON:** And perhaps the chair gets a vote.

19 **THE CLERK:** Oh, I suppose. Mr. Gibson.

20 **CHAIRPERSON GIBSON:** Yes. Thank you.

21 Madam Clerk, that vote was --

22 **COUNSEL RAY BIERING:** I'm counting 7 TO 4 (unintelligible).

23 **CHAIRPERSON GIBSON:** With one abstention. Very good. All right.

24 We thank you very much for these deliberations. We have just a couple other -- one other

1 item, which is board member items. But I do believe we have accomplished enough on

2 that matter.

3 And as such, we stand adjourned.

4 ---oOo---