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BY E-MAIL

February 10, 2022

OHMVR Division & OHV Commissioners
PO Box 942896,
Sacramento, California 94296

RE: OHV Commission Hearing Feb. 17, 2022; Agenda Item III

Dear State Officials,

Friends of Oceano Dunes ("Friends") submits comments on Agenda Item III. Friends is a California not-for-profit corporation, representing approximately 28,000 members and users of the 2 million annual visitors to the Oceano Dunes State Vehicle Recreation Area ("SVRA").

Over two decades, Friends has raised many issues and concerns over the mismanagement of the Oceano Dunes SVRA during numerous OHV Commission hearings, in letters, phone calls and emails with no substantive response from the Resource Agency or State Parks.

Here is a list of some of these concerns:

1. No Superintendent at the ODSVRA - The ODSVRA is the #1 visited SVRA in the state park system and it has been the focus of much debate. Yet we still do not have a Full Time, permanent Superintendent **after nearly 5 years of requesting it**. This suggests that the Resources Agency and State Parks are purposely setting this park up to fail.
2. No Habitat Conservation Plan (HCP) – State Parks has been “working on” the HCP for **nearly 20 years and it still has not been completed and adopted**. This is a waste of OHV dollars.
3. No Representation – User groups overseeing park operation, mitigation strategies and growth initiatives are not represented. Previously, the Technical Review Team (TRT), which I was part of for 18 years, but it has been disbanded.
4. Parks Is Failing to Meet the General Plan and No Long-Range Plan Objectives – State Parks invested significant resources to establish a General Plan in 1975 that was reviewed and approved by the Coastal Commission and it was again updated in the 1990s. However, State Parks continues to ignore its legislative mandate and its own planning documents. State Parks then proposed a Public Works Plan (PWP), spending millions of dollars, and then promptly threw it in the trash once there was the slightest pushback from the Coastal Commission.
5. Abuse of Power & Oversight – Friends has continued to try and resolve issues with the Resources Agency, State Parks and the Coastal Commission, but with no good faith, meaningful reciprocation. The Resources Agency, the Coastal Commission and State Parks all have become a black box, **with no transparency on how decisions are being made**.

Friends of Oceano Dunes is a 501(c)(3) California Not-for-Profit Public Benefit Corporation, comprised of over 28,000 supporters. We represent businesses, environmentalists, equestrians, campers, fishermen, families and off-road enthusiasts who enjoy the benefits of Public Access through Responsible Recreation at the Oceano Dunes State Vehicular Recreation Area (ODSVRA). We want to maintain Access For All!

Friends asks that the OHV Commission investigate the Resources Agency's, the Coastal Commission's and State Parks' abuse of power, malfeasance and waste of OHV Trust funds and general fund dollars. Oceano Dunes SVRA is a state park authorized by state law. Yet, these agencies are working together behind the scenes to close it down and they have been doing so for many years now.

The Stipulated Order of Abatement (SOA) is another example of **a colossal waste of taxpayer dollars.** Twenty-two (22) million dollars have been spent on dust control measures (closing recreational acreage used for more than 100 years for beach driving, OHV recreation and camping). **Friends recently learned from the distinguished SCRIPPS Institute that none of it was warranted:**

1. The Scripps Institution of Oceanography (Scripps) has completed a three-year study that contradicts claims by the San Luis Obispo County Air Pollution Control District (Air District) (and its Hearing Board) concerning dust emissions from Oceano Dunes SVRA.

The Air District has claimed for more than 10 years that the dust being blown onto the Nipomo Mesa is mineral dust from SVRA. The Air District also claimed that the mineral dust contains silica, and further stated that the "silica dust is a known carcinogen which can cause silicosis."

The Scripps Report, titled "Preliminary Results from May 2021 Aerosol Measurements" (https://ohv.parks.ca.gov/?page_id=30498), **shows the Air District claims are untrue.**

Scripps' Lynn M. Russell, Distinguished Professor of Atmospheric Chemistry, noted that **"Scripps found no evidence of mineral dust contributing to all or the majority of dust emissions from the SVRA".**

This study refutes the Air District's claim that mineral dust from the SVRA causes high PM¹⁰ (particulate matter) concentrations on the Nipomo Mesa. Scripps found that, on average, just 14% of the PM¹⁰ measured consists of mineral dust and 4% consists of sea salt. The major downwind particulates are atmospheric water.

This is a major contradiction to what the APCD has claimed for over a decade. Scripps also notes that the dust sources (that do contain mineral dust from dune saltation) do not contain toxic compounds (such as heavy metals or polycyclic aromatic hydrocarbons) and so associating these particulates with detrimental health effects, as the Air District has done, isn't warranted.

2. The OHV Commission should demand that any revised Stipulated Order of Abatement (SOA) incorporate the Scripps' findings and that Dr. Lynn Russell review and opine on any revised SOA revision.

Furthermore, the Air Pollution Control Officer's (APCO) sworn statement (Page 2 of attachment A) states (emphasis added):

"Hearing Board adopted Stipulated Order of Abatement 17-01 (issued 2018) ("SOA") based on previous Air Pollution Control Officer Larry Allen's petition for an Order of Abatement for alleged violations of Health & Safety Code 41700, and District Rule 402 Nuisance, and District Rule 1001 based upon exceedance of the State PM10 Standard."

SOA (Page 16 of attachment B) says (emphasis added):

d. **Nothing herein constitutes a determination by the Hearing Board that ODSVRA constitutes a nuisance as defined by Health and Safety Code section 42451 or Air District Rule 402, which Respondent expressly denies.**"

Friends of Oceano Dunes is a 501(c)(3) California Not-for-Profit Public Benefit Corporation, comprised of over 28,000 supporters. We represent businesses, environmentalists, equestrians, campers, fishermen, families and off-road enthusiasts who enjoy the benefits of Public Access through Responsible Recreation at the Oceano Dunes State Vehicular Recreation Area (ODSVRA). We want to maintain Access For All!

So, lets boil this down, the previous APCO petitioned for an SOA for “alleged” violations of Health & Safety Code 41700, and District Rule 402 Nuisance, but then the very SOA states “Nothing...constitutes a nuisance” of Health and Safety Code section 42451 or Air District Rule 402. **In other words, they cancel each other out!**

The APCO then petitioned for an SOA based on “District Rule 1001 based upon exceedance of the State PM10 Standard.” However, the APCO stated on the record to the hearing board November 2021 that no district meets the State Standards.

Let’s sum this up:

- The Oceano Dunes SVRA **is not** violating Health & Safety Code 41700, and District Rule 402 Nuisance
- **No district in the state** is achieving the state standard.
- **Court declared void the sole intergovernmental agreement adopted to implement Rule 1001.**

We demand State Parks exit the SOA. Friends asks that this Commission weigh in heavily to ensure no further closure of Oceano Dunes SVRA, and that areas previously closed based on junk science be reopened immediately.

Sincerely,



Jim Suty
President – Friends of Oceano Dunes

CC: Tom Roth
FoOD BOD
Lieutenant Governor Eleni Kounalakis
Wade Crowfoot, Secretary, California Natural Resources Agency
Armando Quintero, Director, California Department of State Parks and Recreation

Attachment A

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Michelle L. Gearhart, SBN 263573
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*(Exempt from filing fees per
Gov. Code §§ 27383 and 6103)*

7 Attorneys for Defendants and Respondents, San Luis Obispo County
8 Air Pollution Control District, its Board of Directors, and the
San Luis Obispo County Air Pollution Control District Hearing Board

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN LUIS OBISPO**

11 FRIENDS OF OCEANO DUNES, INC., a
12 California not-for profit corporation,

13 Petitioner and Plaintiff,

14 vs.

15 CALIFORNIA COASTAL COMMISSION, an
agency of the State of California, and
16 DOES 1-50, inclusive,

17 Respondent and Defendant;

18 CALIFORNIA DEPARTMENT OF PARKS
AND RECREATION, a department of the State
19 of California, and DOES 1-50, inclusive,

20 Real Party-in-Interest;

21 SAN LUIS OBISPO COUNTY AIR
POLLUTION CONTROL DISTRICT, a local
22 air pollution control district; the BOARD OF
DIRECTORS OF THE SAN LUIS OBISPO
23 COUNTY AIR POLLUTION CONTROL
DISTRICT, the District's governing body, and
24 DOES 1-50, inclusive,

25 Real Parties-in-Interest;

26 SAN LUIS OBISPO COUNTY AIR
POLLUTION CONTROL DISTRICT
27 HEARING BOARD, an independent body,
appointed at-large by the BOARD OF
28 DIRECTORS OF THE SAN LUIS OBISPO
COUNTY AIR POLLUTION CONTROL
DISTRICT, and DOES 1-50, inclusive.

Case No. 22CV-0024

**DECLARATION OF GARY WILLEY
IN SUPPORT OF REAL PARTIES IN
INTEREST SAN LUIS OBISPO
COUNTY AIR POLLUTION
CONTROL DISTRICT, ITS BOARD OF
DIRECTORS, AND THE AIR
POLLUTION CONTROL DISTRICT
HEARING BOARD'S JOINDER IN
RESPONDENTS' OPPOSITION TO
PETITIONER'S EX PARTE
APPLICATION AND JOINDER IN
RESPONDENTS' REQUEST FOR
JUDICIAL NOTICE IN SUPPORT OF
OPPOSITION**

**Hearing Date: February 10, 2022
Time: 8:30 a.m.
Dept.: 9**

Assigned Judge: Hon. Tana L. Coates
Dept.: D9
Date of Action Filed: 01/20/2022

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Real Party-in-Interest;
SAN LUIS OBISPO COUNTY, a
governmental unit and subdivision of the State
of California, and DOES 1-50, inclusive,
Real Party-in-Interest;
and
the CITY OF GROVER BEACH, an
incorporated City in San Luis Obispo County,
California, and DOES 1-50, inclusive,
Real Party-in-Interest.

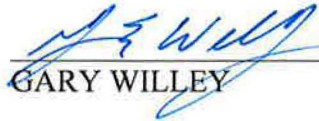
I, Gary Willey, declare as follows:

1. I am the current Air Pollution Control Officer for the San Luis Obispo County Air Pollution Control District (“SLOAPCD”). I am aware of all facts set forth in this declaration of my own person knowledge and can competently testify to said facts if called upon to do so.

2. The San Luis Obispo County Air Pollution Control District (SLOAPCD) Hearing Board is a separate quasi-judicial body, independent of SLOAPCD Board of Directors (Governing Board). Although, the Governing Board appoints the Hearing Board members for fixed three-year terms; once selected they operate completely independent of the Governing Board. The Governing Board adopted Rule 1001 (adopted in 2011) based on violations of the State PM10 standard and subsequently the Hearing Board adopted Stipulated Order of Abatement 17-01 (issued 2018) (“SOA”) based on previous Air Pollution Control Officer Larry Allen’s petition for an Order of Abatement for alleged violations of Health & Safety Code 41700, and District Rule 402 Nuisance, and District Rule 1001 based upon exceedance of the State PM10 Standard. Although, Rule 1001 and SOA 17-10 regulate the same activity, each Board’s authority is independent. The California Health and Safety Code established the Hearing Board system to act as an independent judicial balance of power for the politically elected Board of Directors. As the Air Pollution Control Officer, I am charged enforcement of both Hearing Board orders and the Governing Board adopted rules or their orders.

1 2. As opposed to federal environmental regulation, California regulations allow the
2 Air Pollution Control Officer enforcement discretion over matters under air district authority.
3 In my opinion, at this current time, the SOA process allows more timely compliance with Rule
4 1001. My statement to the governing board on January 26, 2022 (identified as Exhibit J to the
5 declaration of Thomas D. Roth) was not intended to be testimony that Rule 1001 was not in
6 effect, but rather an explanation of why I was utilizing the SOA process to address excess PM10
7 emissions. As stated in the records of both the SOA and Rule 1001 proceedings, both seek the
8 same outcome but from different authorities, protecting the public from exposure to PM10 in
9 excess of the State Standard with slightly different methods. It's my opinion that mitigations
10 developed under the SOA process and approved by the Coastal Commission on December 17,
11 2021 are needed to ensure compliance with Rule 1001 and the SOA.

12 I declare under penalty of perjury under the laws of the State of California that the
13 foregoing is true and correct and that this declaration was executed on February 9, 2022, in San
14 Luis Obispo, California.

15 
16 GARY WILLEY

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Attachment B

FILED

May 4, 2018

Hearing Board
San Luis Obispo County Air
Pollution Control District

BEFORE THE HEARING BOARD OF THE SAN LUIS OBISPO COUNTY
AIR POLLUTION CONTROL DISTRICT
STATE OF CALIFORNIA

In the Matter of

SAN LUIS OBISPO COUNTY AIR
POLLUTION CONTROL DISTRICT,

Petitioner,

v.

CALIFORNIA DEPARTMENT OF PARKS
AND RECREATION OFF-HIGHWAY
MOTOR VEHICLE RECREATION
DIVISION,

Respondent.

Case No. 17-01

**STIPULATED ORDER OF
ABATEMENT**

Health & Safety Code §41700 and
District Rule 402

Hearing Date: April 30, 2018
Time: 9:00 am

Location: San Luis Obispo County
Government Center, Board of Supervisors
Chambers, 1055 Monterey Street, California

RECITALS

WHEREAS, on September 10, 2017, the San Luis Obispo County Air Pollution Control District (hereinafter referred to as “Petitioner,” the “District” or “APCD”) filed with this Hearing Board a Petition for Abatement Order (“Petition”), Case No. 17-01, pursuant to California Health and Safety Code section 42451, against respondents California Department of Parks and Recreation Off-Highway Motor Vehicle Recreation Division (hereinafter referred to as “Respondent,” “State Parks” or “OHMVR”) with regard to alleged nuisances defined

1 pursuant to District Rule 402 and California Health and Safety Code section 41700, beginning
2 on or about May 20, 2010, and on certain occasions thereafter, as a result of particulate matter
3 emissions from the Oceano Dunes State Vehicular Recreation Area (“ODSVRA”). Petitioner
4 and Respondent are referred to collectively herein as the “Parties.”

5
6 **PARTIES AND THE FACILITY**

7 1. The District was and is organized and exists pursuant to Division 26, Part 3 of
8 the California Health and Safety Code, and is the sole and exclusive local agency with the
9 responsibility for comprehensive air pollution control in San Luis Obispo County.

10 2. The Parties agree that State Parks is a California State Agency chartered with
11 managing park units within California, including the Oceano Dunes State Vehicular Recreation
12 Area (ODSVRA), which is managed by the Off-Highway Motor Vehicle Recreation Division
13 (OHMVR), and that OHMVR is responsible for all activities that occur within the ODSVRA,
14 including management and control of beach and dune riding areas, resource management
15 including revegetation and erosion control, and public safety.

16 3. ODSVRA is located in the area known as the Oceano Dunes in southern San
17 Luis Obispo County, three (3) miles south of Pismo Beach and west of Highway 1 (“facility”).
18 The property on which the facility is located is comprised of five-and-one-half (5 ½) square
19 miles of open beach and sand dunes, bordered on the west by the Pacific Ocean, and on the
20 east, north and south by other privately held lands. A portion of the facility’s lands known as
21 the La Grande tract is owned by numerous owners, including fifty-two (52) privately-owned
22 lots, four-thousand-two-hundred-sixteen (4,216) lots owned by the County of San Luis Obispo,
23 and two-hundred-twenty-five (225) lots owned by State Parks. The facility is within the
24 jurisdiction of the San Luis Obispo County Air Pollution Control District and subject to
25 District Rules and Regulations. The Parties agree that numerous private homes, businesses,
26 schools and other entities are located directly downwind of the ODSVRA facility.

27 4. ODSVRA is subject to California Health and Safety Code section 41700, which
28 prohibits the discharge from any source whatsoever quantities of air contaminants or other

1 material that cause injury, detriment, nuisance, or annoyance to any considerable number of
2 persons or to the public or that endanger the comfort, repose, health or safety of any of those
3 persons or the public, or that cause or have a natural tendency to cause, injury or damage to
4 business or property, and District Rule 402, Nuisance, (which contains language substantially
5 similar to California Health and Safety Code section 41700).

6
7 **BACKGROUND/STATEMENTS OF THE PARTIES**

8 **WHEREAS**, following initiation of this action, the Parties agreed on the need for a
9 comprehensive planning effort to effect a global solution to particulate matter emissions that
10 addresses all the various interests, including: the surrounding and downwind communities, the
11 ODSVRA user base, and the various regulatory and permitting agencies, as well as State
12 Parks' mission to operate ODSVRA for a variety of recreational uses, including off-highway
13 motor vehicle recreation.

14 **WHEREAS**, APCD endorses State Parks' strategy to develop and implement a Public
15 Works Plan as the process for a comprehensive ODSVRA planning document that will affect
16 the type and location of mitigation strategies.

17 **WHEREAS**, to that end, the Parties agree that State Parks shall develop and implement
18 a Particulate Mitigation Plan (PMP), to address and resolve the allegations in the Petition. The
19 PMP includes a restoration and emission reduction component that simulates the historic
20 foredune complex, as determined by a 1930's aerial photograph of the dune complex (APCD
21 Exhibit 23), and that will provide critical information to inform the development of the Public
22 Works Plan and a redesigned park.

23 **WHEREAS**, State Parks also agrees to:

- 24 a. Work with ODSVRA user groups to enhance the camping experience in front of
25 the foredunes that will work in concert with the restoration of the foredunes;
26 and
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- 1 b. Additional monitoring within and downwind of the ODSVRA during the
2 stipulated timeframe to assist modeling the emissions reduction, as well as
3 informing State Park's Public Works Plan; and
- 4 c. Conduct an education campaign for the purposes of making the public aware of
5 the air quality issues at ODSVRA and how they can be a part of the solution;
6 and
- 7 d. Continue crystalline silica testing downwind of the SVRA and publish results as
8 part of a comprehensive report on crystalline silica as it relates to Oceano Dunes
9 emissions; and
- 10 e. Consider disbursal of use appropriate as a method to reduce density-related
11 emissions which may include the need to open operational corridors; and
- 12 f. Consider a southern entrance and southern camping opportunities outside of the
13 dunes proper to replace any lost foredune camping; and
- 14 g. Optimize operational mitigations that prove to enhance the air quality mitigation
15 measures.

16 **PUBLIC HEARING**

17 **WHEREAS**, the Clerk assigned this matter Case No. 17-01, set a public hearing on the
18 Petition for November 13, 2017, and provided public notice of the public hearing in
19 accordance with the provisions of California Health and Safety Code section 40823. The
20 Hearing Board commenced the hearing on November 13, 2017, which it continued to January
21 30, 2018 and thereafter to March 21, 2018 and April 30, 2018, all of which continued hearings
22 were similarly properly-noticed. A quorum of the Hearing Board was present on each day of
23 the hearing. Except the initial day of the hearing, November 13, 2017, when Dr. Thomas
24 Richards was absent, five (5) members of the Hearing Board were present: Dr. Yarrow
25 Nelson, Acting Chair; Mr. Robert Carr; Mr. William Johnson; Dr. Thomas Richards; and Mr.
26 Paul Ready. Petitioner District Air Pollution Control Officer was represented by District
27 Counsel Raymond Biering. Respondent OHMVR was represented by Deputy Attorney
28 General Mitchell Rishe. In advance of and throughout the hearing process, the Hearing Board

1 provided the opportunity for the public to submit written comments. During the public
2 hearing, the Hearing Board provided the opportunity for members of the public to submit oral
3 comments and to testify. The Hearing Board's Acting Chair Yarrow Nelson swore in all those
4 interested members of the public who sought to speak or testify. Each Party stipulated to the
5 other Party's proposed exhibits; the Hearing Board admitted all exhibits submitted by the
6 Parties into the evidence and took those exhibits and the public's testimony and comments into
7 consideration during its deliberations and in its decision.

8
9 **WRITTEN EXPLANATION IN SUPPORT ITS DECISION/FINDINGS AND DECISION**
10 **OF THE HEARING BOARD:**

11 Health and Safety Code Section 42451(b) provides that the Hearing Board may issue a
12 stipulated conditional order for abatement without making the requisite findings set forth in
13 Health and Safety Code Section 42451(a), but the Hearing Board must include a written
14 explanation of its action to issue such an order. The Hearing Board issues the following
15 determination of its action: The Hearing Board finds that GOOD CAUSE exists to approve this
16 Stipulated Order for Abatement. This finding of good cause is based on the following:

17 1. The District reported that from May 29, 2012 through October 19, 2017, the
18 District received one-hundred-thirty-three (133) complaints from residents downwind of
19 ODSVRA. (See APCD Exhibit 7.)

20 2. The District monitors air quality throughout San Luis Obispo County, with
21 multiple monitoring sites on the Nipomo Mesa located directly downwind of ODSVRA. These
22 sites include CDF – Arroyo Grande; Mesa2 – Nipomo/Guadalupe Road; and NRP – Nipomo
23 Regional Park. During the period between May 1, 2012 and March 31, 2017, there were three-
24 hundred-sixty-three (363) days when the District observed violations of the state PM₁₀ standard
25 at one or more of these sites. More specifically, the state standard was exceeded three-
26 hundred-fifty-six (356) times at CDF, one-hundred-ninety (190) times at Mesa2, and fifty-nine
27 (59) times at NRP measured during this period at monitoring sites downwind of ODSVRA
28 riding areas. Seven (7) of the state standard exceedances recorded at CDF during this

1 timeframe also exceeded the federal PM₁₀ standard. The primary source of these exceedances
2 and violations was determined by the District after examining the wind speed and wind
3 direction under which they occurred, using data from the extensive air monitoring network
4 located downwind of ODSVRA (APCD Exhibits 6 & 16). Recent computer modeling of
5 particulate matter emissions from ODSVRA by the California Air Resources Board supports
6 the finding of excessive levels of particulate matter in areas where complaints originated
7 (APCD Exhibit 24).

8 3. The Environmental Protection Agency and the California Air Resources Board
9 (“CARB”) have set standards for particulate matter to protect human health and the
10 environment (Title 40, Code of Federal Regulations, Part 50; and Title 17, California Code of
11 Regulations, section 70200).

12 4. Numerous scientific studies and analyses conducted by APCD, State Parks, and
13 CARB (APCD Exhibits 1, 2, 3, 4, 5 & 24) have documented emissions from ODSVRA off-
14 highway vehicle riding areas upwind of the Nipomo Mesa as the main source of particulate
15 matter causing the dust and air pollution that is the subject of the complaints received, and the
16 associated public health concerns that are the subject of this proceeding. Those studies show
17 the Le Grande tract, where most of the camping and a large portion of the riding activity
18 occurs, contains some of the most emissive areas in ODSVRA and is a significant contributor
19 to the particulate matter emissions impacting downwind residents. Like everywhere else in the
20 county, the Nipomo Mesa is also impacted by other natural and manmade sources of
21 particulate emissions, and those sources will always have some contribution to particulate
22 concentrations. APCD, OHMVR and CARB will continue to refine all source contributions of
23 emissions affecting the Nipomo Mesa.

24 5. The Parties agree that sand fencing closed to riding with an array of fencing
25 within the perimeter has been used at ODSVRA with a demonstrated effectiveness in reducing
26 dust generation of approximately seventy-five (75) percent. The Parties agree that there is
27 scientific consensus that vegetation is the most effective in reducing dust generation with an
28 effectiveness of nearly one hundred (100) percent within the vegetated area.

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Attachment 1 for vegetation to increase the dust mitigation effectiveness in years after 2018.

c. By June 30, 2019, install APCO-approved sand track-out control devices at the Grand and Pier Avenue entrances to the Oceano Dunes State Vehicle Recreation Area (ODSVRA).

2. Particulate Matter Reduction Plan: Respondent shall prepare a Particulate Matter Reduction Plan (Plan) that satisfies the following requirements:

- a. The term of the Plan shall be for four (4) years from the date of approval by the APCO;
- b. The Plan shall be designed to achieve state and federal ambient PM₁₀ air quality standards;
- c. To meet the objective of 2b, development of the Plan shall begin by establishing an initial target of reducing the maximum 24-hour PM₁₀ baseline emissions by fifty percent (50%), based on air quality modeling based on a modeling scenario for the period May 1 through August 31, 2013, and shall be carried out by the California Air Resources Board (CARB), or other modeling groups subject to the review of the Scientific Advisory Group (SAG), as defined in paragraph 3, below;
- d. The estimate of emission reductions identified in 2c may be modified based on air quality modeling conducted by CARB or other modeling subject to the review of the SAG required by 3a and 3b;
- e. Subject to permitting agency approval, the Plan shall include feasibility and effectiveness analyses of alternative mitigation measures or mitigation-support measures including, but not limited to, construction of a continuous foredune structure within the OSDVRA near the high water line to reduce wind shear on downwind high-emissivity areas; the vegetation of exposed sand sheet to reduce sand flux by stabilizing the dune surface and support the development of

1 biophysical sand crust formation; the introduction/reintroduction of straw bales or
2 other roughness elements within the ODSVRA to reduce sand flux and downwind
3 dust concentrations; and installation of temporary irrigation system(s) to ensure
4 substantive plant growth and vigor in areas of the ODSVRA identified for
5 revegetation and the application of liquid fertilizer through the irrigation water;

- 6 f. The Respondent shall use its best efforts to increase the current rate of native
7 plant seed production, plant yield, dune planting, and take actions needed to
8 maximize plant survival to the level needed to meet the rate of dune revegetation
9 identified in the Plan (e.g. application of mulch, watering and fertilization;
- 10 g. A draft Plan demonstrating attainment of state and federal ambient PM₁₀ air
11 quality standards, as expeditiously as practicable, shall be submitted to the APCO
12 and the SAG by Respondent no later than February 1, 2019 for the APCO's
13 approval;
- 14 h. The SAG will review the draft Plan and submit comments to the APCO on the
15 completeness, adequacy, and efficacy of proposed control activities, and
16 recommendations for modifications, additions, or deletions to proposed control
17 activities no later than February 15, 2019;
- 18 i. The APCO shall publish a 30-day notice of public workshop no later than 10 days
19 following receipt of SAG recommendations to announce the availability of the
20 draft Work Plan and SAG recommendations, solicit public comments, and solicit
21 public participation at a workshop to review the draft Plan and SAG
22 recommendations;
- 23 j. At the conclusion of the workshop, the APCO shall consider the SAG
24 recommendations and all public comments, and either approve the Plan or return
25 the Plan to Respondent with an itemization of specific deficiencies for correction
26 and reconsideration;
- 27 k. If the APCO's approval of the Plan precedes completion of the Public Works Plan
28 (PWP) public review process, Respondent shall integrate elements of the Plan,

1 upon approval by the APCO, into the PWP public review and comment process to
2 facilitate public input on non-air quality impacts of the Plan;

3
4 3. Scientific Advisory Group: A Scientific Advisory Group (SAG) shall be created by
5 mutual agreement of Respondent and the APCO, taking into advisement the
6 recommendations of the Special Master as designated in that certain agreement between
7 the District and Respondent dated March 26, 2014. The SAG will evaluate, assess, and
8 provide recommendations on the mitigation of windblown PM₁₀ emissions from
9 ODSVRA and on the development of the Particulate Matter Reduction Plan (Plan) and
10 annual Report and Work Plan (Report). The process for selection and responsibilities of
11 the SAG shall include:

12 a. Respondent, APCO, and Special Master shall offer recommendations of experts in
13 the fields of dune geomorphology; aolian erosion control; soil ecology; shoreline
14 botany; biophysical sand crust formation; and air quality modeling, among other
15 disciplines, to each other by June 1, 2018 for consideration of appointment to the
16 SAG;

17 b. By consensus, Respondent and the APCO, with consultation with the Special
18 Master, shall appoint members of the SAG no later than July 1, 2018;

19 c. The SAG will review scientific and technical issues related to the research,
20 development and implementation of windblown PM₁₀ controls and prepare
21 technical specifications and analyses of proposed mitigation measures.

22 Respondent, APCO, and Special Master shall intend for the SAG to foster
23 communication and understanding of the scientific and technical aspects of PM₁₀
24 emission control approaches, provide scientific analysis and recommendations to
25 the Respondent for the development of the Plan, provide critical analyses of
26 Respondent's Plan for APCO's use, provide critical analyses of Respondent's
27 annual Reports and Work Plans for use by the APCO, and become a vehicle for
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1 increased cooperation and collaboration between the Respondent, APCO, and
2 affected stakeholders;

- 3 d. The SAG will meet in person at least once annually to discuss the Plan and
4 Reports including, but not limited to, increments of progress, timelines for
5 increments of progress, and amendments to the Plan, and annual Reports based on
6 new learnings. The SAG may meet more often telephonically or by other
7 networked conferencing means as needed;
- 8 e. The duties of the SAG are both administrative and advisory in nature and in no
9 way alter the authority and responsibility of the Respondent, District, District
10 Board, Hearing Board, APCO, or CARB. The SAG does not have any powers of
11 the Respondent, District, District Board, Hearing Board, APCO, or CARB. As
12 such, it is not a sub-committee of the Respondent, District, District Board,
13 Hearing Board, or CARB.

14
15 4. Annual Report and Work Plan: Respondent shall develop with assistance from the SAG,
16 on an annual basis, a Report and Work Plan (Report or Work Plan) for each year of the 4-
17 year term of the Particulate Matter Reduction Plan for APCO approval. Reports shall
18 satisfy the following requirements:

- 19 a. Reports shall review the dust controls implemented over the previous year, and,
20 using metrics specified in the approved Plan, compare achievements to increment
21 of progress requirements approved in the previous Report;
- 22 b. Reports shall include increments of progress, using tracking metrics specified in
23 the approved Plan, for each dust control and related action included in the
24 proposals for mitigation to be undertaken in the upcoming year including, but not
25 limited to foredune development, mitigation of foredune loss due to natural or
26 anthropogenic impacts, quantities of seeds and plants produced on-site and by any
27 contracted entities, the extent of new and replacement vegetation, plant survival
28

1 rates, new and replacement fencing installed, quantities of other groundcover
2 applied in new and replacement areas and the extent of areas covered;

- 3 c. Additional metrics to assess mitigation progress may be added each year with
4 input from the SAG;
- 5 d. Reports shall propose dust control activities to be undertaken or completed in the
6 next year together with analyses of expected outcomes, mitigation effectiveness,
7 and potential emissions reductions;
- 8 e. The SAG shall prepare and/or recommend and approve pertinent technical
9 specifications of the mitigation techniques proposed in the annual Report,
10 including the type, effectiveness, and geographical extent of applied mitigation.
11 Mitigation will be considered both in riding and non-riding areas of the ODSVRA
12 and in areas outside of the ODSVRA. The Respondent will obtain an evaluation
13 by the SAG for all mitigation prior to seeking approval of each Report by the
14 APCO;
- 15 f. Each Report will estimate, using air quality modeling, the benefits downwind of
16 the ODSVRA and, specifically, the anticipated reduction in PM₁₀ concentrations
17 in populated areas due east of the ODSVRA on the Nipomo Mesa. These
18 estimates will include a sensitivity analysis on emissions rates of increasing the
19 level of effort for each mitigation technique in subsequent years;
- 20 g. Budgetary considerations for development and implementation of the mitigations
21 shall be described in the Report and shall detail the total funding for the one-year
22 period, amount of funding assigned by mitigation type, the source of funding, and
23 the availability of reserve funds in the event of cost increases prior to
24 implementation of a given year's mitigation;
- 25 h. Each Report shall include a detailed implementation schedule with deadlines
26 associated with physical deployment of the mitigation, e.g., wind fencing set-up,
27 emission measurements of the dune surface, in-situ mitigation, and replacement of
28 any temporary mitigation;

- 1 i. Failure to meet any increments of progress or deadlines associated with the
2 physical deployment of the mitigation specified in approved Reports except under
3 conditions specified in 6(e) or (f) shall constitute a violation of this Order;
- 4 j. Implementation schedules will also specify the duration for each mitigation
5 activity and the anticipated impact on emission reductions. The SAG will review
6 and advise on the schedule included in each annual Report;
- 7 k. Annual Reports will include specific metrics and indicators to assess progress
8 achieved toward planning objectives;
- 9 l. Agencies involved in development and implementation of the annual mitigation
10 plans will have the defined roles and responsibilities identified below:
- 11 i. District – Conduct public review processes and approve the Particulate
12 Matter Reduction Plan and annual Work Plans; enforce increment of
13 progress schedules and required action; evaluate and implement, as
14 needed, emission controls on sources external to the ODSVRA that may
15 impact PM₁₀ levels on the Nipomo Mesa; conduct all ambient monitoring
16 at CDF, Oso Flaco, and other sites within the district outside ODSVRA.
- 17 ii. State Parks – Develop and, if necessary, revise annual Work Plans in
18 collaboration with the SAG; implement near-term and future mitigation
19 efforts within ODSVRA that are specified in this Order or approved Work
20 Plans, including establishment of seed production targets to ensure
21 continuous supply of vegetation; provide funding for implementation of
22 approved mitigation and monitoring efforts including reasonable costs
23 incurred by the District; and conduct field emissions testing of dune
24 surface as needed.
- 25 iii. California Coastal Commission – Review and approve proposed annual
26 Work Plans before any mitigation may commence for each year, pursuant
27 to Special Condition 2 of Coastal Development Permit 3-12-050, for
28 proposed mitigation within the scope of that permit; and issue new or

1 amended Coastal Development Permits for any work not within the scope
2 of Coastal Development Permit 3-12-050.
3

4 5. Report Review: The APCO shall determine the approvability of the Annual Reports and
5 Work Plans (Reports). The process by which the APCO considers Reports for approval
6 will include the following:

- 7 a. Draft Reports shall be submitted by Respondent to the APCO and SAG by August
8 1 of each year from 2019 through 2022;
- 9 b. The SAG will review each annual Report and submit comments to the APCO on
10 the completeness, adequacy, and efficacy of proposed control activities, and
11 recommendations for modifications, additions, or deletions to proposed control
12 activities no later than September 1 of each affective year;
- 13 c. The APCO shall publish a 30-day notice of public workshop no later than 10 days
14 following receipt of SAG recommendations to announce the availability of the
15 draft Work Plan and SAG recommendations, solicit public comments, and solicit
16 public participation at a workshop to review the draft Work Plan and SAG
17 recommendations;
- 18 d. Within 10 days of the conclusion of the public workshop, the APCO shall either
19 approve the draft Work Plan or return the Work Plan to Respondent with an
20 itemization of specific deficiencies for correction and reconsideration subsequent
21 to the solicitation of public comments using the same public process described in
22 5(c);
- 23 e. If a disagreement arises between Respondent and the APCO regarding the
24 approval of the Report, the Respondent may request a hearing before the Hearing
25 Board to resolve the disagreement;
- 26 f. Upon approval of the Work Plan by the APCO, Respondent shall immediately
27 commence implementation of the Work Plan;
28

1 g. In October of each year from 2019 through 2022, the Hearing Board, upon
2 request by the Chair or any two members, may convene a meeting to receive an
3 informational update on the Report. If a hearing is also requested by Respondent
4 as set forth in section 5(e) above, this meeting shall also include that hearing.

5
6 **6. General Conditions:**

- 7 a. The Hearing Board shall retain jurisdiction over this matter until December 1,
8 2023, during which period either Respondent or the APCO may apply to modify
9 the terms and conditions of this Stipulated Order, including this deadline, or to
10 terminate this Stipulated Order. At the conclusion of this period, as it may be
11 modified, this Stipulated Order shall expire.
- 12 b. This Stipulated Order for Abatement does not act as a variance, and Respondent is
13 subject to all rules and regulations of the District, and with all applicable
14 provisions of California law.
- 15 c. Nothing herein shall be deemed or construed to limit authority of the APCO to
16 issue Notices of Violation or to seek civil penalties for the allegations alleged in
17 the Petition, or to seek injunctive relief, or to initiate abatement actions or seek
18 other administrative or judicial relief for violations that are not the subject of this
19 proceeding.
- 20 d. Nothing herein constitutes a determination by the Hearing Board that ODSVRA
21 constitutes a nuisance as defined by Health and Safety Code section 42451 or Air
22 District Rule 402, which Respondent expressly denies.
- 23 e. Notwithstanding Condition 6(c) above, if any part of Respondent's failure to
24 satisfy any increment of progress or deadline set forth in this Order results from
25 force majeure, then that specific part only of Respondent's failure shall not be
26 considered a violation. "Force Majeure" as used in this section means any of the
27 following events that prevents the Respondent's performance of the specified act
28 by the deadline set forth in this Order: (a) any act of God, war, fire, earthquake,

1 windstorm, flood, severe drought that is declared as an official state of emergency
2 by the Governor of the State of California, or natural catastrophe; (b) unexpected
3 and unintended accidents (excluding those caused by Respondent or the
4 negligence of its agents or employees); civil disturbance, vandalism, sabotage or
5 terrorism; (c) restraint by court order or public authority or agency; (d) action or
6 non-action by, or inability to obtain the necessary authorizations or approvals
7 from any governmental agency, provided that Respondent demonstrates it has
8 made a timely and complete application to the agency and used its best efforts to
9 obtain that approval; or (e) the inability to obtain private property owner access,
10 provided that Respondent demonstrates it has made a timely and complete request
11 to the owner, and used its best efforts to obtain that access. Force Majeure shall
12 not include normal inclement weather, economic hardship or inability to pay.

13 f. Also, notwithstanding Condition 6(c) above, and in addition to Condition 6(d)
14 above, if Respondent cannot satisfy any increment of progress or deadline set
15 forth in this Order due to any other circumstances beyond Respondent's control,
16 Respondent may submit evidence to the APCO regarding the circumstances and
17 explaining why they prevented Respondent from satisfying the increment of
18 progress or deadline. The APCO shall have the authority to determine that either
19 (i) the circumstances were beyond Respondent's control and excuse the failure to
20 satisfy the increment of progress or deadline; or (ii) the circumstances were within
21 Respondent's control, and do not excuse the failure to satisfy the increment of
22 progress or deadline.

23 g. The Hearing Board, upon request by the Chair or any two members, may convene
24 a public hearing to review the APCO's approval of any condition of this order or
25 modification of a deadline. The Hearing Board may revoke the APCO approval
26 of any condition or modification to a timeline.
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Moved By: Mr. Paul Ready

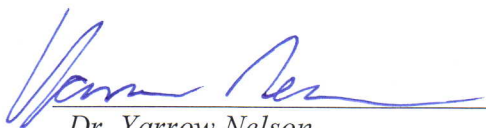
Seconded By: Dr. Thomas Richards

Ayes: Mr. Paul Ready, Mr. William Johnson, Dr. Thomas Richards, Dr. Yarrow Nelson
- Acting Chair

Noes: Mr. Robert Carr

Abstentions: None

Dated this 30th day of April 2018.



Dr. Yarrow Nelson,
Acting Chair
San Luis Obispo County
APCD Hearing Board