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**Subject:** PETITION 17-01 (Continued Hearing re Order of Abatement)  
**Date:** Thursday, April 26, 2018 1:18:18 PM

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Hearing Board Members,

**WHAT THIS HEARING *IS NOT* ABOUT:**

This hearing is not about closing a park or depriving folks of cherished recreational activity.

This hearing is not about absence of science or lack of consensus around the issue of what's causing the particulate matter nuisance.

This hearing is not about absence of data and consensus around the impacts on human health of excessive exceedances of particulate matter air quality standards.

This hearing should not be about decisions to protect public health being based on economic impact arguments.

This hearing is not about "rights" or "entitlements" based on how long someone has done something or when someone moved somewhere.

This hearing should not be about a self-proclaimed majority (of part-time visitors) getting to maintain unrestricted recreational opportunities at the cost of public health for full-time residents.

**WHAT THIS HEARING *IS* ABOUT:**

Clear recognition by Hearing Board members (and the APCD and the Coastal Commission) – and indeed State Parks -- that there is a serious public health issue that relates to operation of the park and needs to be addressed NOW.

Recognition of what constitutes a nuisance, particularly a public health-related nuisance, and that abatement of nuisances is not a "majority rule" process.

Recognition by Hearing Board members that some type of order of abatement is necessary and justified.

Undisputed recognition that this Hearing Board has the independent right and responsibility to fulfill its mission to protect air quality and public health.

**THE ISSUE BEFORE YOU ON APRIL 30:** CAN THE THINGS THAT ACTUALLY MATTER BE ACHIEVED THROUGH THE REVISED PROPOSED ORDER OF ABATEMENT BEFORE YOU.

AS SUPPORTED BY THE REASONS FOR DENIAL INCLUDED BELOW, **THE CLEAR ANSWER IS: NO.**

Respectfully, Mike Normoyle

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**Reasons Why the Revised Proposed Stipulated Order of Abatement Should be Denied:**

When really scrutinized, the revised stipulated order of abatement is a sophisticated ruse, but still a ruse.

The proposed order does not promise anything beyond what the Coastal Commission already approved in September 2017 and February 2018.

Arguably, the proposed order promises less than what the Coastal Commission already approved for 2018 and subsequent years.

The proposed order fails to incorporate contain a vital provision required by the Coastal Commission: that any work to be done by State Parks in connection with the order on land not owned by State Parks must have landowner approval.

The proposed order unnecessarily and unreasonably ties “abatement” and “the type and location of mitigation strategies” to a Public Works Plan that (a) has not been finalized, (b) has not received or completed CEQA review, (c) has not been the subject of public hearing, and (d) has not been approved (by a government agency, coincidentally, that is not a party to this proceeding).

The proposed order lists things the parties “agree to” (pages 3 and 4) and then does not incorporate those elements of agreement into the order.

The proposed order does a very poor and incomplete job of capturing the nature and full extent of the overwhelming evidence in the record thus far regarding: (a) the consensus source of the particulate matter problem, (b) the size and reach of the particulate matter problem, and (c) health impacts of the particulate matter problem on local residents.

The Conclusions section of the proposed order is woefully incomplete and inadequate.

The revised proposed order gives State Parks more, not the same or less, time to obtain approval for a Particulate Mitigation Plan (PMP). There is no outside deadline for approval of a PMP, and no consequences for failing to obtain approval of the PMP by that deadline.

The Hearing Board is given no role in reviewing and approving the PMP or any Annual Reports or Work Plans.

There are no dates or deadlines (or consequences) relating to the submission of Annual Reports and Work Plans, and no discussion of how those reports and work plans are different from those already required by the Coastal Commission. There are no provisions for dealing with deadlines for ultimate approval of any Work Plan that is found by the APCO to be inadequate.

The proposed order introduces a new mini-bureaucracy (i.e. the SAG component) with no rules or guidelines, no assurance of how internal disputes among members would be resolved, and no clarity about who pays for the services of SAG members (which also would likely create a potential conflict of interest).

The proposed order does not address timetables for situations where a proposed annual plan or work plan is found to be inadequate.

The proposed order lacks detailed specificity (i.e. measurables) about (a) what the goals will be (i.e. what exactly is meant by simulation of the historic fore dune complex?), (b) when the goals must be met, (c) when and how it will be determined that a goal has been achieved, and (d) what will happen if the goals are not met on time. At best, some of these details MIGHT be included in an annual plan or work plan that, unlike with the Coastal Commission, the Hearing Board would play no role in reviewing, questioning or approving.

The proposed order does not include a near-term solution for exceedances of state and federal air quality standards that exist to protect public health. Indeed, the revised proposed order contains no deadline date for compliance with state air quality standards.

The proposed order (page 14) makes the commencement of any work associated with an annual Work Plan in any year after 2018 subject to Coastal Commission review and approval. There is no provision addressing how or if this requirement changes depending on the status of State Parks' Public Works Plan.

The proposed order does not include near-term specifics for "fixes" that deal with clearly identified emissivity hot spots.

There are no real consequences for violations. Indeed, nothing is said about what happens, or could happen, if a violation of the order occurs. There's simply no real abatement hammer.

There are no specific deadlines for anything after 2018 and early 2019.

There are no provisions, which would be normal and expected in nuisance abatement cases, for the APCD to be reimbursed for costs associated with the abatement proceedings to date and/or for costs associated with implementation of and compliance with the order.

There is no provision stating that State Parks is still obligated to comply with all APCD rules and regulations, which would include Rule 1001.

The “force majeure” (i.e. Mack Truck) provision (pages 16-17) is incredibly broad and friendly to State Parks. It is not clear what is meant in Sec. 6(e)(e) about “obtain private owner access.” Any provision should be clarified to include approval for access from any landowner other than State Parks, which would include San Luis Obispo County for the land it owns in the La Grande Tract.

Informational updates for the Hearing Board (see page 15) are optional rather than mandatory.

Rather than preserving the Hearing Board’s absolute discretion to determine when the order will terminate, the revised proposed order states that the stipulated order “shall terminate” as of December 1, 2023 regardless of what has or has not been achieved.

THE HEARING BOARD HAS A VERY SUITABLE MODEL FOR HANDLING A STIPULATED AGREEMENT FOR ABATEMENT OF A NUISANCE. NAMELY, THE *CONDITIONAL ORDER OF ABATEMENT* DATED AUGUST 4, 1989 IN CASE NO. 89-03 (THE UNION OIL/UNOCAL MATTER). IN THAT CASE THE RESPONDENT’S ABILITY TO CONTINUE OPERATING ITS FACILITIES WAS CONDITIONED ON CONTINUING GOOD FAITH COMPLIANCE WITH THE PARTIES’ STIPULATED AGREEMENT THAT WAS FAR MORE STRAIGHTFORWARD, FAR MORE PRECISE, AND FAR MORE CAPABLE OF MEASURING COMPLIANCE OR VIOLATION. IN THAT CASE THE HEARING BOARD’S ACCEPTANCE OF A STIPULATION BETWEEN THE PARTIES DID NOT PREVENT THE HEARING BOARD FROM FINDING AND STATING IN THE *CONDITIONAL ORDER* THAT A NUISANCE EXISTED AND WOULD PERSIST UNLESS ALL TERMS AND CONDITIONS WERE COMPLIED WITH.

